§ 31.28 Facilities; receivership.

(a) The owner or owners 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 owners 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 at such time as either party notified the other in writing that he wishes to terminate such receivership.

(b) (1) Upon issuing a notice that he will revoke or suspend an operating certificate in accordance with subdivision (a) of section 31.16 of this article, or that he will disapprove an application for renewal of such certificate pursuant to section 31.05 of this article the commissioner may apply to the supreme court in the county where the facility is located for an order to show cause why a receiver should not be appointed to operate the facility. The court shall, upon determining that the notice was properly issued and that it would be in the best interests of the person served by the facility to have services continued after the effective date of the revocation or suspension, appoint a receiver for the facility to take effect upon the revocation or suspension of the operating certificate in accordance with the provisions of this article.

The order to show cause shall be returnable not less than five days after service is completed and shall provide for personal service of a copy thereof and the papers upon which it is based on the operator of the facility and upon the owner or owners of the land and/or owners of the land and/or structure on or in which the facility is located. If any such operator or owner 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 registered mail, return receipt requested, to such owner at the last address registered to him with the office, or in the absence of such registration, to the address set forth

in the last recorded deed with respect to such facility. 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) The commissioner may, prior to suspending an operating certificate for up to sixty days pursuant to subdivision (b) of section 31.16 of this article, request a temporary restraining order appointing a receiver for a facility effective with the commissioner's issuance of the notice of the suspension. The court shall issue the temporary restraining order if it is satisfactorily shown by the commissioner that he has reasonable grounds for finding that continued operating of the facility presents an immediate danger to the health and welfare of any of the public or any of the individuals served by the facility.

(3) The court shall appoint a receiver which should, where reasonably possible, be a voluntary association or not-for-profit corporation recommended by the commissioner which holds a valid and current operating certificate for a similar type facility, or which shall satisfactorily demonstrate to the commissioner its qualifications for such operating certificate.

(4) 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 the application. If the court shall find that the facts warrant the granting thereof, 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 patient 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.

(5) If the operating certificate of the operator of the facility is revoked or suspended, then the receiver shall apply for the issuance of an operating certificate for the facility and shall for the duration of the receivership comply with all applicable statute and regulations for such operating certificate.

(6) 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, provide for the orderly transfer of all clients in the facility to other facilities or make other provisions for their continued safety and care or make other arrangements as authorized in subparagraph (a) of paragraph eight of this subdivision. During the interim period when such clients 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 clients provided that such correction or elimination of deficiencies does not include major alterations of the physical structure of the facility. He shall, during this period operate the facility in such a manner as to guarantee safety and adequate care for such clients. He 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 hundred dollars. Any receiver who is an official or employee of the state of New York shall not be required to file any bond. He shall collect incoming payments from all sources and apply them to the costs incurred in the performance of his functions as receiver. 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 recision, 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 clients 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 in reimbursing the costs of such goods, except that no such compensation shall be made for any such goods for which the owner 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.

(7) 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 his 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 he operates such facility in compliance with the terms of his appointment he shall not have any liability in his personal capacity, except for gross negligence and intentional acts.

(8) (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 receiver, or other voluntary agency or not-for-profit corporation satisfactory to the commissioner, has (A) agreed to continue the operation of the facility, (B) entered into a satisfactory long-term (not less than two years) arrangement reached on a bona fide arm's length basis with the owner or owner's of land and/or structure on or in which the facility is or is to be located, and (C) applied for and received from the commissioner a new operating certificate for the continued operation of the facility; or

(iii) at such time as all of the persons served by the facility have been provided alternative 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.

(9) (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 persons or persons who would, but for the provisions of this subdivision, have been entitled to receive the sum to be paid. No person 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.

(10) (a) 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 of 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 mortgages or liens.

(b) 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.

(c) The receiver shall be entitled to use for operating and maintenance expenses and the basic needs of persons served by 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.

(d) 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 those served by 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 of mental health. Reference to the commissioner in this section shall mean the commissioner of mental health.