*** § 2806-a. Temporary operator.** 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 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

(ii) has demonstrated that he or she has 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 shall include, but not be limited to, the delegation to an entity that has not been established as an operator of the general hospital 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. (a) In the event that: (i) a facility seeks extraordinary financial assistance and the commissioner finds that the facility is experiencing serious financial instability that is jeopardizing existing or continued access to essential services within the community, or (ii) the commissioner finds that there are conditions within the facility that seriously endanger the life, health or safety of residents or patients, the commissioner may appoint a temporary operator to assume sole control and sole responsibility for the operations of that facility, or (iii) the commissioner finds that there has been an improper delegation of management authority by the governing authority or operator of a general hospital, the commissioner shall appoint a temporary operator to assume sole control and sole responsibility for the operations of that facility. The appointment of the temporary operator shall be effectuated pursuant to this section and shall be in addition to any other remedies provided by law.

(b) The established operator of a facility may at any time request the commissioner to appoint a temporary operator. Upon receiving such a request, the commissioner may, if he or she determines that such an action is necessary to restore or maintain the provision of quality care to the residents or patients or alleviate the facility's financial instability, enter into an agreement with the established operator for the appointment of a temporary operator to assume sole control and sole responsibility for the operations of that facility.

3. (a) A temporary operator appointed pursuant to this section shall, prior to his or her appointment as temporary operator, provide the commissioner with a work plan satisfactory to the commissioner to

address the facility's deficiencies and serious financial instability and a schedule for implementation of such plan. A work plan shall not be required prior to the appointment of the temporary operator pursuant to clause (ii) of paragraph (a) of subdivision two of this section if the commissioner has determined that the immediate appointment of a temporary operator is necessary because public health or safety is in imminent danger or there exists any condition or practice or a continuing pattern of conditions or practices which poses imminent danger to the health or safety of any patient or resident of the facility. Where such immediate appointment has been found to be necessary, the temporary operator shall provide the commissioner with a work plan satisfactory to the commissioner as soon as practicable.

(b) The temporary operator shall use his or her best efforts to implement the work plan provided to the commissioner, if applicable, and to correct or eliminate any deficiencies or financial instability in the facility and to promote the quality and accessibility of health care services in the community served by the facility. Such correction or elimination of deficiencies or serious financial instability shall not include major alterations of the physical structure of the facility. During the term of his or her appointment, the temporary operator shall have the sole authority to direct the management of the facility in all aspects of operation and shall be afforded full access to the accounts and records of the facility. The temporary operator shall, during this period, operate the facility in such a manner as to promote safety and the quality and accessibility of health care services or residential care in the community served by the facility. The temporary operator shall have the power to let contracts therefor or incur expenses on behalf of the facility, provided that where individual items of repairs, improvements or supplies exceed ten thousand dollars, the temporary operator shall obtain price quotations from at least three reputable sources. The temporary operator shall not be required to file any bond. 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 temporary operator. Neither the temporary operator nor the department shall engage in any activity that constitutes a confiscation of property without the payment of fair compensation.

4. The temporary operator shall be entitled to a reasonable fee, as determined by the commissioner, and necessary expenses incurred during his or her performance as temporary operator, to be paid from the revenue of the facility. The temporary operator shall collect incoming payments from all sources and apply them to the reasonable fee and to costs incurred in the performance of his or her functions as temporary operator in correcting deficiencies and causes of serious financial instability. The temporary operator shall be liable only in his or her capacity as temporary operator for injury to person and property by reason of conditions of the facility in a case where an established operator would have been liable; he or she shall not have any liability in his or her personal capacity, except for gross negligence and intentional acts.

5. (a) The initial term of the appointment of the temporary operator shall not exceed one hundred eighty days. After one hundred eighty days, if the commissioner determines that termination of the temporary operator would cause significant deterioration of the quality of, or access to, health care or residential care in the community or that reappointment is necessary to correct the conditions within the facility that seriously endanger the life, health or safety of residents or patients, or the financial instability that required the appointment of the temporary operator, the commissioner may authorize up to two additional ninety-day terms.

(b) Upon the completion of the two ninety-day terms referenced in paragraph (a) of this subdivision,

(i) if the established operator is the debtor in a bankruptcy proceeding, and the commissioner determines that the temporary operator requires additional terms to operate the facility during the pendency of the bankruptcy proceeding and to carry out any plan resulting from the proceeding, the commissioner may reappoint the temporary operator for additional ninety-day terms until the termination of the bankruptcy proceeding, provided that the commissioner shall provide for notice and a hearing as set forth in subdivision six of this section; or

(ii) if the established operator requests the reappointment of the temporary operator, the commissioner may reappoint the temporary

operator for one additional ninety-day term, pursuant to an agreement between the established operator, the temporary operator and the department.

(c) Within fourteen days prior to the termination of each term of the appointment of the temporary operator, the temporary operator shall submit to the commissioner and to the established operator a report describing:

(i) the actions taken during the appointment to address such deficiencies and financial instability,

(ii) objectives for the continuation of the temporary operatorship if necessary and a schedule for satisfaction of such objectives,

(iii) recommended actions for the ongoing operation of the facility subsequent to the term of the temporary operator including recommendations regarding the proper management of the facility and ongoing agreements with individuals or entities with proper delegation of management authority; and

(iv) with respect to the first ninety-day term referenced in paragraph (a) of this subdivision, a plan for sustainable operation to avoid closure, or transformation of the facility which may include any option permissible under this chapter or the social services law and implementing regulations thereof. The report shall reflect best efforts to produce a full and complete accounting.

(d) The term of the initial appointment and of any subsequent reappointment may be terminated prior to the expiration of the designated term, if the established operator and the commissioner agree on a plan of correction and the implementation of such plan.

6. (a) The commissioner, upon making a determination to appoint a temporary operator pursuant to paragraph (a) of subdivision two of this section shall, prior to the commencement of the appointment, cause the established operator of the facility to be notified of the determination by registered or certified mail addressed to the principal office of the established operator. Such notification shall include a detailed description of the findings underlying the determination to appoint a temporary operator, and the date and time of a required meeting with the commissioner and/or his or her designee within ten business days of the date of such notice. At such meeting, the established operator shall

have the opportunity to review and discuss all relevant findings. At such meeting or within ten additional business days, the commissioner and the established operator shall attempt to develop a mutually satisfactory plan of correction and schedule for implementation. In the event such plan of correction is agreed upon, the commissioner shall notify the established operator that the commissioner no longer intends to appoint a temporary operator. A meeting shall not be required prior to the appointment of the temporary operator pursuant to clause (ii) of paragraph (a) of subdivision two of this section if the commissioner has determined that the immediate appointment of a temporary operator is necessary because public health or safety is in imminent danger or there exists any condition or practice or a continuing pattern of conditions or practices which poses imminent danger to the health or safety of any patient or resident of the facility. Where such immediate appointment has been found to be necessary, the commissioner shall provide the established operator with a notice as required under this paragraph on the date of the appointment of the temporary operator.

(b) Should the commissioner and the established operator be unable to establish a plan of correction pursuant to paragraph (a) of this subdivision, or should the established operator fail to respond to the commissioner's initial notification, a temporary operator shall be appointed as soon as is practicable and shall operate pursuant to the provisions of this section.

(c) The established operator shall be afforded an opportunity for an administrative hearing on the commissioner's determination to appoint a temporary operator. Such administrative hearing shall occur prior to such appointment, except that the hearing shall not be required prior to the appointment of the temporary operator pursuant to clause (ii) of paragraph (a) of subdivision two of this section if the commissioner has determined that the immediate appointment of a temporary operator is necessary because public health or safety is in imminent danger or there exists any condition or practice or a continuing pattern of conditions or practices which poses imminent danger to the health or safety of any patient or resident of the facility. An administrative hearing as provided for under this paragraph shall begin no later than sixty days from the date of the notice to the established operator and shall not be extended without the consent of both parties. Any such hearing shall be

strictly limited to the issue of whether the determination of the commissioner to appoint a temporary operator is supported by substantial evidence. A copy of the decision shall be sent to the established operator.

(d) The commissioner shall, upon making a determination to reappoint a temporary operator for the first of an additional ninety-day term pursuant to paragraph (a) of subdivision five of this section, cause the established operator of the facility to be notified of the determination by registered or certified mail addressed to the principal office of the established operator. If the commissioner determines that additional reappointments pursuant to subparagraph (i) of paragraph (b) of subdivision five of this section are required, the commissioner shall again cause the established operator of the facility to be notified of such determination by registered or certified mail addressed to the principal office of the established operator at the commencement of the first of every two additional terms. Upon receipt of such notification at the principal office of the established operator and before the expiration of ten days thereafter, the established operator may request an administrative hearing on the determination to begin no later than sixty days from the date of the reappointment of the temporary operator. Any such hearing shall be strictly limited to the issue of whether the determination of the commissioner to reappoint the temporary operator is supported by substantial evidence.

7. No provision contained in this section shall be deemed to relieve the established operator or any other person of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the established operator or any other person prior to the appointment of any temporary operator hereunder; nor shall anything contained in this section be construed to suspend during the term of the appointment of the temporary operator any obligation of the established operator or any other person for the payment of taxes or other operating and maintenance expenses of the facility nor of the established operator or any other person for the payment of mortgages or liens.

8. The commissioner shall cause the temporary president of the senate, the speaker of the assembly, and the chairs of the senate and the

assembly health committees to be notified of the appointment of a temporary operator pursuant to paragraph (a) of subdivision two of this section upon such appointment. Such notification shall include, but not be limited to, the name of the established operator, the name of the appointed temporary operator and a description of the reasons for such appointment to the extent practicable under the circumstances and in the sole discretion of the commissioner.

* NB Repealed April 1, 2031