**§ 2810. Residential health care facilities; receivership.** 1. The owner or owners of any residential health care facility may at any time request the department to take over the operation of such facility by the appointment of a receiver. Upon receiving such a request, the department may, if it deems such action desirable, enter into an agreement with any such owners on the appointment of a receiver to take charge of the facility under whatever conditions as shall be found acceptable by both parties. Receivership commenced in accordance with the provisions of this subdivision shall terminate at such time as is agreed upon by the parties, or at such time as either party notifies the other in writing that he wishes to terminate such receivership.

2. a. As a means of protecting the health, safety and welfare of the patients in a residential health care facility, whenever the commissioner revokes the operating certificate of such a facility he shall apply to the supreme court in the county where the facility is situated for an order directing the owner of the land and/or structure on or in which the facility is located to show cause why the commissioner, or his designee, should not be appointed receiver to take charge of the facility. In those cases where operating certificates have been revoked pursuant to paragraph (a) of subdivision five of section twenty-eight hundred six of this chapter the supreme court shall appoint a receiver who may be the commissioner or his designee. Such application shall contain proof by affidavit that the facility has had its operating certificate revoked. Such 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 on which it is based on the owner or owners of the land and/or structure on or in which the facility is located. If any such 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 by him with the department, 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.

b. 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, then the commissioner, or any person designated by the commissioner, shall be appointed receiver to take charge of the facility, and the court shall determine a fair monthly rental for the facility, and for the furniture, fixtures and movable equipment therein, taking into account all relevant factors, including the condition of such facility, and the condition of such furniture, fixtures and movable equipment, 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 and for the costs of furniture, fixtures and movable equipment 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 and to the owner or owners of the furniture, fixtures and movable equipment therein for each month that the receivership remains in effect.

c. 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 patients in the facility to other facilities or make other provisions for their continued safety and health care. During the interim period when such patients 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 patients 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 health care for such patients. He shall have the power to let contracts therefor or incur expenses provided that where individual items of repairs, improvements or supplies exceed three thousand dollars, the receiver shall obtain price quotations from at least three reputable sources. The receiver 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. 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 department shall engage in any activity that constitutes a confiscation of property without the payment of fair compensation.

d. The receiver shall be entitled to the same fees, commissions and necessary expenses as receivers in actions to foreclose mortgages. 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; he shall not have any liability in his personal capacity, except for gross negligence and intentional acts. The personnel and facilities of the department shall be available to the receiver for the purposes of carrying out his duties as receiver and the cost of such services shall be deemed a necessary expense of the receiver.

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

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

(b) when the department 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

(c) at such time as all of the patients in the facility have been provided alternative modes of health care, either in another facility or otherwise.

(ii) 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.

f. (i) 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.

(ii) 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 so paid. No patient 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.

g. Any other provision of this chapter notwithstanding, the department 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.

h. No provision contained herein shall be deemed to relieve the owner 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 owner or any other person 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 any other person 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.

* 3. The commissioner is authorized to make non-interest bearing payments to receivers appointed pursuant to this section within the amounts made available therefor by the legislature. No such payment shall be made unless the commissioner reasonably anticipates that repayment shall be made prior to or upon termination of the receivership. Any such payment to a receiver shall be made pursuant to a repayment agreement entered into by the receiver with the commissioner which shall specify a time within which full repayment must be made. Repayments by receivers shall be applied to reimburse any first instance appropriation made for the purposes of this subdivision.

* NB (Effective pending Federal Law)