**§ 461-f. Operation of facility in receivership.** 1. As a means of protecting the health, safety and welfare of the residents of an adult care facility subject to inspection and supervision by the department, it may become necessary under certain circumstances to authorize the continuing operation of such facility for a temporary period by a court appointed receiver, at the discretion of the commissioner, as provided in this section or with respect to an adult home, enriched housing program or residence for adults, a receiver approved by the department of health pursuant to written agreement between the department and the operator or operators of such facility, provided that such agreement shall not exceed a period of sixty days but may be extended for an additional sixty day period upon agreement by the parties.

2. The operator or operators of any adult home, enriched housing program or residence for adults may at any time request the department of health to appoint a receiver to take over the operation of such facility. Upon receiving such a request, the department of health may, if it deems such action desirable, enter into an agreement with any such operator or operators for the appointment of a receiver to take charge of the facility under whatever conditions as shall be found acceptable by the parties, provided that such agreement shall not exceed a period of sixty days but may be extended for an additional sixty day period upon agreement by the parties.

3. (a) In the event of a transfer of possession of the premises of such facility from an approved operator to a court appointed receiver in a bankruptcy or mortgage foreclosure proceeding, the department may authorize such court appointed receiver to continue to operate such facility for a temporary period pending the filing and review of an application to the department by such receiver or by another person for an operating certificate, provided, however, that such court appointed receiver agrees to operate the facility during such temporary period in accordance with such terms and conditions as may be set by the department, which terms and conditions shall include compliance with all applicable provisions of law and regulations of the department, and which shall include a waiver by the receiver of any assessment of fees against the department, the commissioner and the state. Such application

for an operating certificate shall be filed within ninety days after the transfer of possession to the receiver, unless the time for such filing is extended by the department.

(b) The commissioner may make application to appear and advise the court of any objections he may have to the transfer of possession from the approved operator to any other person including a receiver or of any objections he may have to continuing a receiver or any other person in possession.

(c) After a receiver obtains such temporary authorization, he may operate such facility only so long as he continues to do so in compliance with the applicable law, regulations of the department, and the terms and conditions for such authorization as set by the department.

4. (a) When the department revokes or temporarily suspends the operating certificate of such facility and the commissioner determines that appointment of a receiver is necessary to protect the health, safety and welfare of the residents of a facility the commissioner may apply to the supreme court in the county where the facility is situated for an order directing the operators, owners and prime lessors, if any, of the premises to show cause why the commissioner, or at the discretion of the commissioner, his designee, should not be appointed receiver to take charge of the facility. 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 operators, owners and prime lessors, if any, of the premises. If any such operator, owner or prime lessor 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 operator, owner or prime lessor at the last address reported to the department, or otherwise known to the department.

(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 at the discretion of the commissioner, any person designated by the commissioner, shall be appointed receiver to take charge of the facility. Except in the case where the receiver is assuming an existing bona fide arms length lease, the commissioner shall determine a reasonable monthly rental for the facility, based on consideration of all appropriate factors, including the condition of such facility. The rent as determined by the commissioner shall be paid by the receiver to the owners or prime lessors as may be directed by the court for each month that the receivership remains in effect, provided, however that nothing contained herein shall be construed to alter or diminish any obligation the operator may have under any currently valid lease.

(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 six months after the date on which the receivership was ordered, unless otherwise extended by the court, provide for the orderly transfer of all residents in the facility to other facilities or make other provisions for their continued safety and care. He shall, during this period, operate the facility in compliance with the applicable law and regulations of the department, and shall have such additional powers, approved by the commissioner, to incur expenses as may be necessary to so operate the facility. 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 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 such owners have already been reimbursed.

(d) (i) The receiver shall be entitled to a fee and reimbursement for expenses as determined by the commissioner, based upon consideration of all appropriate factors relating to the operation of the facility, to be paid as a charge against the operator, not to exceed the fees, commissions and necessary expenses authorized to be paid to receivers in an action to foreclose a mortgage.

(ii) 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.

(iii) The receiver appointed pursuant to this subdivision may, subject to approval by the commissioner, ratify any collective bargaining agreement in effect between the operator and the employees of a facility, or suspend such collective bargaining agreement, provided however, that he remain liable for payment of wages and salaries at the rates and levels in effect at the time of his appointment.

(iv) (A) The receiver shall notify the commissioner of any lien or conveyance made in contemplation of receivership with an intent to remove an asset of the facility from the jurisdiction and use of the receiver, or to hinder or delay the receiver in the execution of his duties and responsibilities as receiver; such notice shall be forwarded to the commissioner in a manner to be determined by regulations of the department.

(B) With respect to any such lien or conveyance, the commissioner shall have available any remedy available to a trustee in a bankruptcy proceeding pursuant to the federal bankruptcy act or any remedy available to a creditor in a proceeding pursuant to article ten of the debtor and creditor law and may apply to the court to have such lien or conveyance set aside, or to have the court make any order which the circumstances of the case may require.

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

a. six months after the date on which it was ordered, except that the court may extend such period for good cause shown;

b. when the department grants the facility a new operating certificate; or

c. at such time as all of the residents in the facility have been provided alternative modes of care, either in another facility or otherwise; provided, that the residents shall not be removed from the facility unless it is required for the protection of the health, safety or welfare of the residents.

(ii) At the time of termination of the receivership, the receiver shall render a full and complete accounting to the court and shall dispose of any profit or 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 resident 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) (i) No provision contained herein shall be deemed to relieve the operators, owners or prime lessors, if any, of any civil or criminal liability or obligation incurred, or any duty imposed by law, by reason of acts or omissions of such persons prior to the appointment of any receiver hereunder. During the period a facility is operated by a receiver, the operator, owner or prime lessor, if any, shall continue to be liable for all obligations for the payment of taxes or other operating and maintenance expenses of the facility and the owner or other appropriate person shall continue to be liable for the payment of mortgages or liens.

(ii) Expenses incurred by a receiver to meet the operating and maintenance expenses of the facility and the basic needs of the residents of the facility shall be deemed the obligations of the operator, and not the obligation of the receiver or the state.

(iii) 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.

(iv) 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 operating and maintenance expenses for such month.

(v) 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.

5. (a) Subject to paragraph (c) of this subdivision, the commissioner is authorized to make payments to receivers appointed pursuant to the provisions of subdivision three 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.

(b) The operator of a facility operated by a receiver pursuant to the provisions of subdivision three of this section shall be liable for all monies made available to the receiver pursuant to the provisions of paragraph (a) of this subdivision.

(c) To the extent funds are appropriated, payments made pursuant to this section shall be made from the local assistance fund 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, upon the recommendation of the commissioner of social services, 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, upon the recommendation of the commissioner of social services, 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) Any payments made by the department to a receiver pursuant to the provisions of this section shall be made without any obligation on the part of the social services district in which the receiver-operated facility is located to reimburse the department for any such payments.

6. Nothing contained in this section shall be construed to require the commissioner to seek the appointment of a receiver or to assume the responsibilities of a receiver directly or indirectly through his designee; nor shall this section authorize any court to compel the commissioner to assume the responsibilities of a receiver or to appoint a designee to assume such responsibilities.