A BUDGET BILL submitted by the Governor in accordance with Article VII of the Constitution

AN ACT to amend the public health law and the social services law, in relation to improving the safety and quality of nursing homes in New York state; and to amend part E of chapter 56 of the laws of 2013 amending the public health law relating to the general public health work program, in relation to the effectiveness thereof (Part __);

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

PART __

Section 1. Subdivision 1 of section 12 of the public health law, as amended by section 16 of part A of chapter 58 of the laws of 2008, is amended and a new paragraph (e) is added to read as follows:

1. (a) Except as provided in paragraphs (b) and (c) of this subdivision, any person who violates, disobeys or disregards any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto for which a civil penalty is not otherwise expressly prescribed by law, shall be liable to the people of the state for a civil penalty [of] not to exceed [two] ten thousand dollars for every such violation.

(b) The penalty provided for in paragraph (a) of this subdivision may be increased to an amount not to exceed [five] fifteen thousand dollars for a subsequent violation if the person committed the same violation, with respect to the same or any other person or persons, within twelve months of the initial violation for which a penalty was assessed pursu-
paragraph (a) of this subdivision and said violations were a serious threat to the health and safety of an individual or individuals.

(c) The penalty provided for in paragraph (a) of this subdivision may be increased to an amount not to exceed [ten] twenty-five thousand dollars if the violation directly results in serious physical harm to any patient or patients.

(d) Effective on and after April first, two thousand [eight] twenty-one the comptroller is hereby authorized and directed to deposit amounts collected in excess of [two] ten thousand dollars but less than fifteen thousand dollars per violation to the patient safety center account to be used for purposes of the patient safety center created by title two of article twenty-nine-D of this chapter.

(e) Effective on and after April first, two thousand twenty-one, amounts collected for violations of article twenty-eight, thirty-six, or forty of this chapter equal to or in excess of fifteen thousand dollars per violation may be used by the commissioner, notwithstanding section one hundred twelve or one hundred sixty-three of the state finance law, for initiatives that, in the discretion of the commissioner, are likely to improve the quality of care or quality of life of patients or residents served by providers licensed pursuant to article twenty-eight, thirty-six, or forty of this chapter. Such purposes may include, but are not limited to, surveillance and inspection activities; activities designed to improve the quality, performance and compliance of poorly performing providers; training and education of provider staff; and improving patient, resident, and consumer involvement in initiatives to improve patient and resident quality of care or quality of life.
§ 2. Subdivision 1 of section 12 of the public health law, as amended by chapter 190 of the laws of 1990, is amended and four new paragraphs (b), (c), (d) and (e) are added to read as follows:

1. [Any] (a) Except as provided in paragraphs (b) and (c) of this subdivision, any person who violates, disobeys or disregards any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto for which a civil penalty is not otherwise expressly prescribed by law, shall be liable to the people of the state for a civil penalty [of] not to exceed [two] ten thousand dollars for every such violation.

(b) The penalty provided for in paragraph (a) of this subdivision may be increased to an amount not to exceed fifteen thousand dollars for a subsequent violation if the person committed the same violation, with respect to the same or any other person or persons, within twelve months of the initial violation for which a penalty was assessed pursuant to paragraph (a) of this subdivision and said violations were a serious threat to the health and safety of an individual or individuals.

(c) The penalty provided for in paragraph (a) of this subdivision may be increased to an amount not to exceed twenty-five thousand dollars if the violation directly results in serious physical harm to any patient or patients.

(d) Effective on and after April first, two thousand twenty-one the comptroller is hereby authorized and directed to deposit amounts collected in excess of ten thousand dollars but less than fifteen thousand dollars per violation to the patient safety center account to be used for purposes of the patient safety center created by title two of article twenty-nine-D of this chapter.
(e) Effective on and after April first, two thousand twenty-one, amounts collected for violations of article twenty-eight, thirty-six, or forty of this chapter equal to or in excess of fifteen thousand dollars per violation may be used by the commissioner, notwithstanding section one hundred twelve or one hundred sixty-three of the state finance law, for initiatives that, in the discretion of the commissioner, are likely to improve the quality of care or quality of life of patients or residents served by providers licensed pursuant to article twenty-eight, thirty-six, or forty of this chapter. Such purposes may include, but are not limited to, surveillance and inspection activities; activities designed to improve the quality, performance and compliance of poorly performing providers; training and education of provider staff; and improving patient, resident, and consumer involvement in initiatives to improve patient and resident quality of care or quality of life.

§ 3. Subdivision 2 of section 12-b of the public health law, as amended by section 17 of part A of chapter 58 of the laws of 2008, is amended to read as follows:

2. A person who wilfully violates any provision of this chapter, or any regulation lawfully made or established by any public officer or board under authority of this chapter, the punishment for violating which is not otherwise prescribed by this chapter or any other law, is punishable by imprisonment not exceeding one year, or by a fine not exceeding ten thousand dollars or by both. Effective on and after April first, two thousand twenty-one the comptroller is hereby authorized and directed to deposit amounts collected in excess of two thousand dollars but less than fifteen thousand dollars per violation to the patient safety center account to be used for purposes of the patient safety center created by title two of article twenty-
nine-D of this chapter. Effective on and after April first, two thousand twenty-one, amounts collected for violations of article twenty-eight, thirty-six, or forty of this chapter equal to or in excess of fifteen thousand dollars per violation may be used by the commissioner pursuant to paragraph (e) of subdivision one of section twelve of this chapter.

§ 4. Subdivision 2 of section 12-b of the public health law, as amended by chapter 463 of the laws of 1969, is amended to read as follows:

2. A person who wilfully violates any provision of this chapter, or any regulation lawfully made or established by any public officer or board under authority of this chapter, the punishment for violating which is not otherwise prescribed by this chapter or any other law, is punishable by imprisonment not exceeding one year, or by a fine not exceeding [two] twenty-five thousand dollars or by both. Effective on and after April first, two thousand twenty-one the comptroller is hereby authorized and directed to deposit amounts collected in excess of ten thousand dollars but less than fifteen thousand dollars per violation to the patient safety center account to be used for purposes of the patient safety center created by title two of article twenty-nine-D of this chapter. Effective on and after April first, two thousand twenty-one, amounts collected for violations of article twenty-eight, thirty-six, or forty of this chapter equal to or in excess of fifteen thousand dollars per violation may be used by the commissioner pursuant to paragraph (e) of subdivision one of section twelve of this chapter.

§ 5. Paragraph (c) of subdivision 4 of section 206 of the public health law, as amended by chapter 602 of the laws of 2007, is amended to read as follows:
(c) assess any penalty prescribed for a violation of or a failure to comply with any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto, not exceeding [two] twenty-five thousand dollars for every such violation or failure, which penalty may be assessed after a hearing or an opportunity to be heard;

§ 6. The opening paragraph of subdivision 11 of section 2801-a of the public health law, as amended by section 57 of part A of chapter 58 of the laws of 2010, is amended and a new paragraph (e) is added to read as follows:

Any person filing a proposed certificate of incorporation, articles of organization or an application for establishment of a residential health care facility for approval of the public health and health planning council shall file with the commissioner such information [on the ownership of the property interests in such facility as shall] as may be prescribed by regulation, including, but not limited to, the following:

(e) Information pertaining to staffing, the source of staffing, and staff skill mix.

§ 7. Section 2803-w of the public health law, as added by chapter 677 of the laws of 2019, is amended to read as follows:

§ 2803-w. Independent quality monitors and quality improvement organizations for residential health care facilities. 1. The department may require a residential health care facility or group of residential health care facilities to contract with an independent quality monitor selected, and on reasonable terms determined, by the department, pursuant to a selection process conducted notwithstanding [sections] section one hundred twelve or one hundred sixty-three of the state finance law, for purposes of monitoring the operator's compliance with a written and mandatory corrective plan and reporting to the department on the imple-
mentation of such corrective action, when the department has determined in its discretion that operational deficiencies exist at such facility that show:

[1.] (a) a condition or conditions in substantial violation of the standards for health, safety, or resident care established in law or regulation that constitute a danger to resident health or safety;

[2.] (b) a pattern or practice of habitual violation of the standards of health, safety, or resident care established in law or regulation; or

[3.] (c) any other condition dangerous to resident life, health, or safety. Such written mandatory corrective plans shall include caps on administrative and general costs that are unrelated to providing direct care (including providing at least minimum staffing levels as determined by the department) or care coordination.

2. Where, in two consecutive inspections, regardless of the timeframe between such inspections, a residential health care facility has been issued more than one statement of deficiencies citing violations of the department's regulations concerning infection control, such residential health care facility shall, at its own expense, contract with a quality improvement organization, or such other independent quality monitor selected by the department, to assess and resolve such facility's infection control deficiencies, including establishing new infection control policies and procedures in consultation with such organization. The administrator, director of nursing, and medical director of such residential health care facility shall work with and provide necessary support, facility access, and information to such organization to effectuate resolution of infection control deficiencies.

3. For the purposes of this section:
(a) "Quality improvement organization" shall mean an organization operating with the purpose of improving healthcare quality for Medicare beneficiaries, which has been designated by the United States Department of Health and Human Services, Centers of Medicare and Medicaid Services through the Quality Improvement Organization Program; and

(b) "Independent quality monitor" shall mean an organization, other than a quality improvement organization, which has been selected by the department pursuant to subdivision one or two of this section.

§ 8. The public health law is amended by adding a new section 2828 to read as follows:

§ 2828. Residential health care facilities; excess revenue. 1. Notwithstanding any law to the contrary, the department shall promulgate regulations governing the disposition of revenue in excess of expenses for residential health care facilities. Such regulations shall require that a minimum of seventy percent of revenue be spent on direct resident care, and that forty percent of revenue shall be spent on resident-facing staffing, provided that amounts spent on resident-facing staffing shall be included as a part of amounts spent on direct resident care. Beginning on and after January first, two thousand twenty-two, fifteen percent of costs associated with resident-facing staffing that is contracted out by a facility shall be deducted from the calculation of the amount spent on resident-facing staffing and direct resident care. Such regulations shall further include at a minimum that any residential health care facility for which total operating revenue exceeds total operating and non-operating expenses by more than five percent of total operating and non-operating expenses, or that fails to spend the minimum amount necessary to comply with the minimum spending standards for resident-facing staffing or direct resident care, calculated on an annual
basis, shall expend such excess revenue, or the difference between the
minimum spending requirement and the actual amount of spending on resi-
dent-facing staffing or direct care staffing, as the case may be, in a
manner to be determined by such regulations, by October first of the
following year. In the event any residential health care facility fails
to spend any excess revenue in the manner directed by such regulations
by October first of the following year, such excess revenue shall be
payable to the state by November first of such year. The department
shall collect such payments by methods including, but not limited to,
deductions or offsets from payments made pursuant to the Medicaid
program.

2. For the purposes of this section and section twenty-eight hundred
twenty-eight-a of this article, the following terms shall have the
following meanings:

(a) "Revenue" shall mean the total operating revenue from all payer
sources as reported in the residential health care facility cost reports
submitted to the department.

(b) "Expenses" shall include all operating and non-operating expenses,
before extraordinary gains, reported in cost reports submitted pursuant
to this section, except as expressly excluded by regulations and/or this
section. Such exclusions shall include, but not be limited to, any
related party transaction to the extent that the value of such trans-
action is greater than fair market value, and the payment of compen-
sation for employees who are not actively engaged in or providing
services at the facility.

(c) "Direct resident care" shall exclude, at a minimum and without
limitation, capital depreciation, rent and leases, fiscal services, and
administrative services.
(d) "Resident-facing staffing" shall include all staffing expenses in the ancillary and program services categories on exhibit h of the residential health care reports as in effect on February fifteenth, two thousand twenty-one; provided that the department may by regulation, or by emergency regulation, adjust such staffing expenses to align with any change to the residential health care reports.

§ 8-a. The public health law is amended by adding a new section 2828-a to read as follows:

§ 2828-a. Excess revenues for management salaries. Within the amounts prescribed by section twenty-eight hundred twenty-eight of this article, a salary for any executive or managerial position which does not involve direct resident care shall be limited by regulation by the department based upon the number of beds for resident care at such facility. In any event such salary shall not exceed two hundred fifty thousand dollars annually. Provided further, notwithstanding any other law to the contrary, a residential care facility shall not expend more than fifteen percent of expenses on executive or managerial salaries, and the department shall be authorized to promulgate regulations to effectuate this section.

§ 9. Section 2860 of the public health law is amended by adding three new subdivisions 3, 4 and 5 to read as follows:

3. A company shall post maximum rates to be charged for facilities and services, fixed pursuant to subdivision one of this section, on a publicly accessible website. Such posting shall be updated on an annual basis no later than April first of each year. Such posting shall detail rates for each non-governmental payer source.

4. A company shall: (a) publicly list all owners on a website maintained by the facility and shall submit such list to the department for
posting on its website and update such information within thirty days of
any change or transaction affecting ownership; (b) publicly disclose on
such facility's website and regularly update the name and business
address of any landlord of such facility's premises; and (c) publicly
provide a summary of all contracts for provision of goods or services
for which such facility pays with any portion of Medicaid or Medicare
funds or other agreements entered into by the company on such facility's
website within thirty days of execution of such agreement or contract.

5. The commissioner may promulgate such regulations as may be deemed
necessary or appropriate to implement subdivisions three and four of
this section.

§ 10. Subdivision 7 of section 460-d of the social services law, as
added by chapter 669 of the laws of 1977, paragraph (a) as amended by
chapter 719 of the laws of 1989, paragraph (b) as amended by chapter 524
of the laws of 1984, and paragraph 2 of paragraph (b) as amended by
chapter 733 of the laws of 1994, is amended to read as follows:

7. (a) The department shall adopt regulations establishing civil
penalties of up to [one] ten thousand dollars per day to be assessed
against all adult care facilities except facilities operated by a social
services district for violations of (i) regulations of the department
pertaining to the care of residents in such facilities, (ii) paragraph
(a) of subdivision three of section four hundred sixty-one-a of this
chapter, or (iii) an order issued pursuant to subdivision eight of this
section. The regulations shall specify the violations subject to penalty
and the amount of the penalty to be assessed in connection with each
such violation and shall specify that only civil penalties of up to
[one] ten thousand dollars per day per violation shall be assessed
pursuant to this paragraph against an adult care facility found respon-
sible for an act of retaliation or reprisal against any resident, employee, or other person for having filed a complaint with or having provided information to any long term care patient ombudsman functioning in accordance with section five hundred forty-four or five hundred forty-five of the executive law.

(b) [(1)] In addition to any other civil or criminal penalty provided by law, the department shall have the power to assess civil penalties in accordance with its regulations adopted pursuant to paragraph (a) of this subdivision, after a hearing conducted in accordance with the procedures established by regulations of the department. Such procedures shall require that notice of the time and place of the hearing, together with a statement of charges of violations, shall be served in person or by certified mail addressed to the facility at least thirty days prior to the date of the hearing. The statement of charges of violations shall set forth the existence of the violations, the amount of penalty for which it may become liable and the steps which must be taken to rectify the violation and, where applicable, a statement that the department contends that a penalty may be imposed under this paragraph regardless of rectification. An answer to the charges of violations, in writing, shall be filed with the department, not less than ten days prior to the date of hearing. The answer shall notify the department of the facility's position with respect to each of the charges and shall include all matters which if not disclosed in the answer would be likely to take the department by surprise. The commissioner, or a member of his staff who is designated and authorized by him to hold such hearing, may in his discretion allow the facility to prove any matter not included in the answer. [Where the facility satisfactorily demonstrates that it either had rectified the violations within thirty days of receiving written
notification of the results of the inspection pursuant to section four
hundred sixty-one-a of this chapter, or had submitted within thirty days
an acceptable plan for rectification and was rectifying the violations
in accordance with the steps and within the additional periods of time
as accepted by the department in such plan, no penalty shall be imposed,
except as provided in subparagraph two of this paragraph.

(2) Rectification shall not preclude the assessment of a penalty if
the department establishes at a hearing that a particular violation,
although corrected, endangered or resulted in harm to any resident as
the result of:

(i) the total or substantial failure of the facility's fire detection
or prevention systems, or emergency evacuation procedures prescribed by
department safety standard regulations;

(ii) the retention of any resident who has been evaluated by the resi-
dent's physician as being medically or mentally unsuited for care in the
facility or as requiring placement in a hospital or residential health
care facility and for whom the operator is not making persistent efforts
to secure appropriate placement;

(iii) the failure in systemic practices and procedures;

(iv) the failure of the operator to take actions as required by
department regulations in the event of a resident's illness or accident;

(v) the failure of the operator to provide at all times supervision of
residents by numbers of staff at least equivalent to the night staffing
requirement set forth in department regulations; or

(vi) unreasonable threats of retaliation or taking reprisals, includ-
ing but not limited to unreasonable threats of eviction or hospitaliza-
tion against any resident, employee or other person who makes a
complaint concerning the operation of an adult care facility, partic-
ipates in the investigation of a complaint or is the subject of an
action identified in a complaint.

The department shall specify in its regulations those regulations to
which this subparagraph two shall apply.

(3) In assessing penalties pursuant to this paragraph, the department
shall consider promptness of rectification, delay occasioned by the
department, and the specific circumstances of the violations as mitigating factors.]

(c) Upon the request of the department, the attorney general may
commence an action in any court of competent jurisdiction against any
facility subject to the provisions of this section, and against any
person or corporation operating such facility, for the recovery of any
penalty assessed by the department in accordance with the provisions of
this subdivision.

(d) Any such penalty assessed by the department may be released or
compromised by the department before the matter has been referred to the
attorney general, and where such matter has been referred to the attor-
ney general, any such penalty may be released or compromised and any
action commenced to recover the same may be settled and discontinued by
the attorney general with the consent of the department.

§ 11. Paragraph (a) of subdivision 9 of section 460-d of the social
services law, as amended by chapter 558 of the laws of 1999, is amended
to read as follows:

(a) The department shall have authority to impose a civil penalty not
exceeding [one] ten thousand dollars per day against, and to issue an
order requiring the closing of, after notice and opportunity to be
heard, any facility which does not possess a valid operating certificate
issued by the department and is an adult care facility subject to the
provisions of this article and the regulations of the department. A hearing shall be conducted in accordance with procedures established by department regulations which procedures shall require that notice of the determination that the facility is an adult care facility and the reasons for such determination and notice of the time and place of the hearing be served in person on the operator, owner or prime lessor, if any, or by certified mail, return receipt requested, addressed to such person and received at least twenty days prior to the date of the hearing. If such operator, owner or prime lessor, if any, is not known to the department, then service may be made by posting a copy thereof in a conspicuous place within the facility or by sending a copy thereof by certified mail, return receipt requested, addressed to the facility. A written answer to the notice of violation may be filed with the department not less than five days prior to the date of the hearing. Demonstration by the facility that it possessed an operating certificate issued pursuant to this article, article twenty-eight of the public health law or article sixteen, twenty-three, thirty-one or thirty-two of the mental hygiene law at the time the hearing was commenced shall constitute a complete defense to any charges made pursuant to this subdivision.

§ 12. Subdivision (c) of section 122 of part E of chapter 56 of the laws of 2013 amending the public health law relating to the general public health work program, as amended by section 7 of part E of chapter 57 of the laws of 2019, is amended to read as follows:

(c) section fifty of this act shall take effect immediately [and shall expire nine years after it becomes law];

§ 13. Subdivisions 2, 3, 5 and 6 of section 2806-a of the public health law, as added by section 50 of part E of chapter 56 of the laws
of 2013, and paragraph (a) of subdivision 2 as amended by section 8 and paragraph (iii) of paragraph (c) of subdivision 5 as amended by section 9 of part K of chapter 57 of the laws of 2015, are amended to read as follows:

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.

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 opera-
tor 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 deficien-
cies 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 recommenda-
tions regarding the proper management of the facility and ongoing agree-
ments 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 implement-
ing 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 reap-
pointment 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 satis-
factory 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 subdi-
vision, 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 opera-
tor.
(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.

§ 14. Section 2810 of the public health law is amended by adding a new subdivision 2-a to read as follows:

2-a. Notwithstanding any other law to the contrary, the commissioner may appoint an emergency receiver, upon no less than twenty-four hours' notice to the operator of a facility, upon a determination that public health or safety is in imminent danger or that there exists any condition or practice or a continuing pattern of conditions or practices that poses imminent danger to the health or safety of any patient or resident of such facility. Such an emergency receiver shall serve until a final
determination has been made upon an order to show cause filed in accordance with subdivision two of this section; provided, however, that an
application for such an order shall be made to the supreme court within thirty days of the appointment of such emergency receiver.

§ 15. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act or any other application of any provision of this act.

§ 16. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that the amendments to subdivision 1 of section 12 of the public health law made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 32 of part A of chapter 58 of the laws of 2008, as amended, when upon such date the provisions of section two of this act shall take effect; and provided further that the amendments to subdivision 2 of section 12-b of the public health law made by section three of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 32 of part A of chapter 58 of the laws of 2008, as amended, when upon such date the provisions of section four of this act shall take effect. Effective immediately, the addition, amendment and/or repeal of any rule, regulation, or emergency regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.