

Effective Date: 07/01/90

Title: Section 600.2 - Requirements for approval

600.2 Requirements for approval. (a) The application must be complete and in proper form. It shall provide all the information essential for the Public Health Council's consideration.

(b) The applicant must satisfactorily demonstrate to the council:

(1) that there is a public need for the facility or the proposed new facility;

(2) (i) If a nonprofit corporation, that the members of the board of directors and the officers of the corporation are of such character, experience, competence and standing as to give reasonable assurance of their ability to conduct the affairs of the corporation in its best interests and in the public interest and so as to provide proper care for the patients or residents to be served by the facility or the proposed facility;

(ii) if a proprietary business, that the owner, or all the partners, if a partnership, are persons of good moral character who are competent to operate the business so as to provide proper care for the patients or residents to be served by the proposed facility;

(iii) if a business corporation, that the members of the board of directors, the officers and the stockholders of the corporation are of such character, experience, competence and standing as to give reasonable assurance of their ability to conduct the affairs of the corporation so as to provide proper care for the patients or residents to be served by the proposed facility;

(3) that there are adequate finances to properly establish and conduct the proposed facility;

(4) that, with respect to an applicant who is already or within the past 10 years has been an incorporator, director, sponsor, principal stockholder, or operator of any facility as specified in paragraph (b) of subdivision (3) of section 2801-a of the Public Health Law, a substantially consistent high level of care has been rendered in each such facility with which the applicant is or has been affiliated during the past 10 years or during the period of affiliation, as appropriate. In reaching this determination, the Public Health Council shall consider findings of facility inspections, including but not limited to the title XVIII and XIX (of the Social Security Act) and article 28 survey findings, as such pertain to violations of this Chapter, periodic medical review/independent professional review (PMR/IPR) findings, routine and patient abuse complaint investigation results, and other available information. The Public Health Council's determination that a substantially consistent high level of care has been rendered shall be made after reviewing the following criteria: the gravity of any violation, the manner in which the applicant/operator exercised supervisory responsibility over the facility operation, and the remedial action, if any, taken after the violation was discovered.

(i) (a) In reviewing the gravity of the violation, the Public Health Council shall consider whether the violation threatened, or resulted in direct, significant harm to the health, safety or welfare of patients/residents.

(b) In reviewing the manner in which the applicant/operator exercised supervisory responsibility over the facility operation, the Public Health Council shall consider whether a reasonably prudent applicant/operator should have been aware of the conditions which resulted in the violation.

(c) In reviewing any remedial action taken, the Public Health Council shall consider whether the applicant/operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent applicant/operator would take to prevent the reoccurrence of the violation.

(ii) When violations were found which either threatened to directly affect patient/resident health, safety or welfare, or resulted in direct, significant harm to the health, safety or welfare of patients/residents, there shall not be a determination of a substantially consistent high level of care if the violations reoccurred or were not promptly corrected.

(c)(1) The applicant must supply any additional documentation or information requested by the department acting on behalf of the Public Health Council within 30 days, or any other stated time frame, of such request, or must obtain from the department acting on behalf of the council an extension of the time in which to provide such documentation or information which is requested during the review of the application. Any request for an extension of time shall set forth reasons why such documentation or information could not be obtained within the prescribed time. The granting of a request for an extension shall be at the discretion of the department acting on behalf of the council. Failure to provide such documentation or information within the time prescribed or as extended by the department acting on behalf of the council shall constitute an abandonment or withdrawal of the application without any further action by the council or department. (2) The applicant must supply any authorization the council or the department requests in order to verify any documentation or information contained in the application or to obtain any additional documentation or information which the council or department finds is pertinent to the application. Failure to provide such authorization shall constitute an abandonment or withdrawal of the application without any further action by the council or department.

(d) Whenever any applicant proposes to lease premises in which the operation of a hospital as defined in article 28 of the Public Health law is to be conducted, the lease agreement shall include the following language:

"The landlord acknowledges that his rights of reentry into the premises set forth in this lease do not confer on him the authority to operate a hospital as defined in article 28 of the Public Health law on the premises and agrees that he will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, N.Y. 12237, notification by certified mail of his intent to reenter the premises or to initiate dispossess proceedings or that the lease is due to expire, at least 30 days prior to the date on which the landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before expiration of the lease.

"Upon receipt of notice from the landlord of his intent to exercise his right of reentry or upon the service of process in dispossess proceedings and 60 days prior to the expiration of the lease, the tenant shall immediately notify by certified mail the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, of the receipt of such notice or service of such process or that

the lease is about to expire."

(e) No lease covering the premises in which the operation of a hospital as defined in article 28 of the Public Health Law is to be conducted may contain any provision whereby rent, or any increase therein, is based upon the Consumer Price Index, or any other cost-of-living index, except:

(1) leases for outpatient facilities and premises leased solely for administrative purposes may contain cost-of-living index rent determination or adjustment provisions, provided the following conditions are met:

(i) the lease is reviewed and approved by the department;

(ii) the space rented is in a multi-purpose, multi-use building not constructed specifically for the purpose of housing an outpatient facility;

(iii) the rental, if the lease is a sublease, is the same or less than the rental in the overlease;

(iv) the applicant has no interest, direct or indirect, beneficial or of record, in the ownership of the building or any overlease; and

(v) the rental per square foot, in the judgement of the department, is the same as or is comparable to other rentals in the building in which the outpatient service or administrative space is to be located, and the rental per square foot is comparable to the rental of similar space in other comparable buildings in the area when such comparisons can be made.

(2) in addition to the exception set forth in paragraph (1) of this subdivision, in the event the lease covering hospital premises contains provisions whereby it is the lessor's responsibility to pay necessary expenses associated with such premises, such as real estate taxes, utilities, heat, insurance, maintenance and operating supplies, such lease may contain provisions which allow adjustments to the rent only to the extent necessary to compensate for changes in such expenses.

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