

§13004. Powers and duties of the receiver

1. Powers and duties. A receiver appointed pursuant to this chapter has such powers as the court may direct to operate the facility or provider and to remedy the conditions that constituted grounds for the receivership, to protect the health, safety and welfare of the residents or clients and to preserve the assets and property of the residents or clients, the owner and the licensee. On notice and hearing, the court may issue a writ of possession in behalf of the receiver, for specified facility or provider property. The receiver shall make reasonable efforts to notify residents or clients and family that the facility or provider is placed in receivership. The owner and licensee are divested of possession and control of the facility or provider during the period of receivership under conditions as the court specifies. With the court's approval, the receiver has specific authority to:

A. Remedy violations of state rules and federal regulations governing the operation of the facility or provider; [PL 1997, c. 610, §3 (NEW).]

B. Hire, direct, manage and discharge any employees, including the administrator of the facility or provider; [PL 1997, c. 610, §3 (NEW).]

C. Receive and expend in a reasonable and prudent manner the revenues of the facility or provider due during the 30-day period preceding the date of appointment and becoming due after the appointment; [PL 1997, c. 610, §3 (NEW).]

D. Continue the business of the facility or provider and the care of residents or clients; [PL 1997, c. 610, §3 (NEW).]

E. Correct or eliminate any deficiency of the facility or provider that endangers the safety or health of the residents or clients, if the total cost of the correction does not exceed \$3,000. The court may order expenditures for this purpose in excess of \$3,000 on application from the receiver; and [PL 1997, c. 610, §3 (NEW).]

F. Exercise additional powers and perform additional duties, including regular accountings, the court considers appropriate. [PL 1997, c. 610, §3 (NEW).]
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2. Revenues of facility or provider. Revenues of the facility or provider must be handled as follows.

A. The receiver shall apply the revenues of the facility or provider to current operating expenses and, subject to the following provisions, to debts incurred by the licensee prior to the appointment of the receiver. The receiver shall ask the court for direction in the treatment of debts incurred prior to appointment when those debts appear extraordinary, of questionable validity, unrelated to the normal and expected maintenance and operation of the facility or provider or when payment of the debts will interfere with the purposes of the receivership. Priority must be given by the receiver to expenditures for current direct resident or client care. Revenues held by or owing to the receiver in connection with the operation of the facility or provider are exempt from attachment and trustee process, including process served prior to the institution of receivership proceedings. [PL 1997, c. 610, §3 (NEW).]

B. The receiver may correct or eliminate any deficiency of the facility or provider that endangers the safety or health of the residents or clients, if the total cost of the correction does not exceed \$3,000. On application by the receiver, the court may order expenditures for this purpose in excess of \$3,000. The licensee or owner may apply to the court to determine the reasonableness of any expenditure over \$3,000 by the receiver. [PL 1997, c. 610, §3 (NEW).]

C. In the event that the receiver does not have sufficient funds to cover expenses needed to prevent or remove jeopardy to the residents or clients, the receiver may petition the court for permission to borrow for these purposes. Notice of the receiver's petition to the court for permission to borrow

must be given to the owner, the licensee and the department. The court may, after hearing, authorize the receiver to borrow money upon specified terms of repayment and to pledge security, if necessary, if the court determines that the facility or provider should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy or if it determines that the facility or provider should be closed and that the expenditure is necessary to prevent or remove jeopardy to residents or clients for the limited period of time that they are awaiting transfer. The purpose of this provision is to protect residents or clients and to prevent the closure of facilities or providers that, under proper management, are likely to be viable operations. This section may not be construed as a method of financing major repair or capital improvements to facilities that have been allowed to deteriorate because the owner or licensee has been unable or unwilling to secure financing by conventional means. [PL 1997, c. 610, §3 (NEW).]

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3. Avoidance of preexisting leases, mortgages and contracts. A receiver may not be required to honor a lease, mortgage, secured transaction or other contract entered into by the owner or licensee of the facility or provider if the court finds that:

A. The person seeking payment under the agreement has an ownership interest in the facility or provider or was related to the licensee, the facility or the provider by a significant degree of common ownership or control at the time the agreement was made; or [PL 1997, c. 610, §3 (NEW).]

B. The rental, price or rate of interest required to be paid under the agreement is in excess of a reasonable rental, price or rate of interest. [PL 1997, c. 610, §3 (NEW).]

If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest that the receiver is permitted to avoid and if the real estate or goods are necessary for the continued operation of the facility or provider, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the term of the receivership. The court shall hold a hearing on the application within 15 days, and the receiver shall send notice of the application to any owners and mortgagees of the property at least 10 days before the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to an action against the receiver for payment or for the possession of the subject goods or real estate by a person who received that notice.

Notwithstanding this subsection, there may not be a foreclosure or eviction during the receivership by any person if the foreclosure or eviction would, in view of the court, serve to defeat the purpose of the receivership.

[PL 1997, c. 610, §3 (NEW).]

4. Closing of facility or provider. The receiver may not close the facility or provider without leave of the court. In ruling on the issue of closure, the court shall consider:

A. The rights and best interests of the residents or clients; [PL 1997, c. 610, §3 (NEW).]

B. The availability of suitable alternative placements; [PL 1997, c. 610, §3 (NEW).]

C. The rights, interest and obligations of the owner and licensee; [PL 1997, c. 610, §3 (NEW).]

D. The licensure status of the facility or provider; and [PL 1997, c. 610, §3 (NEW).]

E. Any other factors that the court considers relevant. [PL 1997, c. 610, §3 (NEW).]

When a facility or provider is closed, the receiver shall provide for the orderly transfer of residents or clients to mitigate transfer trauma.

[PL 1997, c. 610, §3 (NEW).]

SECTION HISTORY

PL 1997, c. 610, §3 (NEW).

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