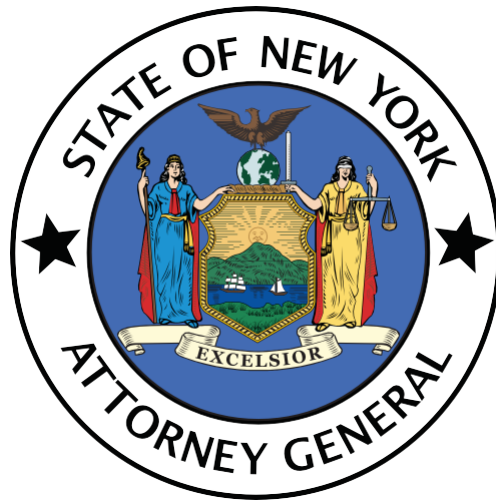


Voluntary dissolution of not-for-profit corporations with no assets



Office of the New York State Attorney General
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**Office of the New York State Attorney General
Charities Bureau**

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Voluntary dissolution of not-for-profit corporations with no assets

Getting started: Checklist for petitions

The following checklist may help you prepare your documents for submission to the Attorney General or to the supreme court of the county, on notice to the Attorney General.

Checklist of documents for a no-asset dissolution

The necessary forms and documents are:

- Plan of dissolution (as an attachment to the petition)
 - Certificate of dissolution
 - Petition to the Attorney General for approval of certificate of dissolution
- Attachments to petition for approval of certificate of dissolution
 - Copy of the certificate of incorporation, together with all amendments, and the current bylaws
 - Other than an approval by the Attorney General, all required governmental body and officer approvals
 - Plan of dissolution
 - Resolutions of the board and if appropriate, the membership
- Final financial report (and any other required final reports)
- Cover letter that includes contact information, including phone number and email address, for attorney or other individual submitting the petition

Introduction

We at the Charities Bureau drafted this document to provide guidance to charitable not-for-profit corporations that are seeking to dissolve, and the lawyers who represent them. **This document does not contain legal advice.** If you do not have legal representation, consult the lawyer-referral service of the New York State Bar Association at <https://nysba.org/new-york-state-bar-association-lawyer-referral-service/> You may also be able to find an organization that provides legal services at low or no cost to nonprofit organizations.

To see this guidance and other information for not-for-profit corporations, visit the Attorney General's website: <https://www.ag.ny.gov/resources>.

For corporations located in the following counties, submit petitions via email to Filing.Transactions@ag.ny.gov:

- Albany
- Bronx
- Columbia
- Fulton
- Greene
- Hamilton
- Kings
- Montgomery
- New York
- Queens
- Rensselaer
- Richmond
- Saratoga
- Schenectady
- Schoharie
- Warren
- Washington

For corporations in other counties, submit your petition directly to the regional offices of the Attorney General that serves your county. Appendix D and the following webpage lists those offices, their contact information, and the counties they serve:

<https://www.ag.ny.gov/regional-office-contact-information>

If you have questions, email us at Questions.Transactions@ag.ny.gov.

Who should use this guidance?

This guidance is for dissolving **charitable not-for-profit corporations that have no assets or liabilities at the time of dissolution.** We have prepared it to assist these corporations

fulfill the requirements for dissolution pursuant to Article 10 of the Not-for-Profit Corporation Law (N-PCL).

If your corporation has assets to distribute or liabilities at the time of dissolution, use “Voluntary dissolution of not-for-profit corporations with assets,” which is available on the Attorney General’s website at <https://ag.ny.gov/sites/default/files/regulatory-documents/dissolution-with-assets.pdf>.

If your corporation is insolvent, or if its assets are insufficient to pay its debts and liabilities in full, bring a judicial dissolution proceeding in the supreme court of your corporation’s county pursuant to N-PCL Article 11. The statute requires notice to creditors and the Attorney General (see N-PCL §§ 1102(a)(1)(A), 1103(b), and 1104(c)).

This guidance is for nonjudicial dissolution under Article 10 of N-PCL.

Notes:

Dissolving corporations that are required to be registered with the Charities Bureau must update their registration and annual filings prior to dissolution.¹

Corporations that have never been funded and have not conducted any activities are not required to register.

Non-charitable not-for-profit corporations do not require court or Attorney General approval unless they hold charitable assets at the time of dissolution (N-PCL § 1002(d)(1)).

Summary of procedures for a no-asset dissolution

Step 1: The board of directors adopts a plan of dissolution (a plan)

See Appendix B for a sample plan.

A quorum must be present and at least a majority of the directors present must vote for dissolution. As the alternative, if not prohibited by the certificate of incorporation or the bylaws, the board can adopt the plan by unanimous written consent. If the board has fewer than three directors, the affirmative vote of all remaining directors is required to adopt the plan. If only one director remains, identify that person as the "sole remaining director."

¹ The officers and directors of charitable organizations are obligated to administer the organizations’ assets responsibly, and comply with the duties of care, loyalty, and obedience. If the assets are not being used for their intended purposes, they must be distributed to another charitable organization with similar purposes (N-PCL §§ 720(a)(1)(A); 1001(d)(3)).

Quick statutory reference guide	
Board of directors' adoption and authorization of plan of dissolution	N-PCL §§ 1001(a), 1002(a), & 1002(b)
Quorum and required vote for board approval of plan	N-PCL §§ 1002(a)(1)(i), 707, 708, and 709
Requirement for unanimous vote if there are fewer than the number of directors required for a quorum	N-PCL § 1002(a)(1)(ii)

Step 2: The members vote on the plan, if they have voting rights

If the corporation has members entitled to vote, after the board of directors has authorized the plan, the plan is submitted to the membership for approval. Approval constitutes a vote of at least two-thirds of the members with a quorum present at a meeting. If the corporation's documents permit, the plan can be approved without a meeting by unanimous written consent of all the members entitled to vote.

Note: A corporation has members entitled to vote on the plan if the corporation's certificate of incorporation or bylaws include membership rights, such as the right to elect the board of directors.

If the organization has no members, the plan is deemed authorized upon adoption by the board.

Quick statutory reference guide	
Membership rights	N-PCL § 103(a)(9)
Submission of plan to members for approval	N-PCL § 1002(a)(2)
Quorum and required vote for membership approval	N-PCL §§ 1002(a)(2), 612, 613(c), and 614
Authorization requirements if there are no members	N-PCL § 1002(b)

Step 3: The corporation obtains required approval from governing entity that created it

If the approval of any governmental body or officer was required for the formation of the corporation, the corporation must get written approval of the dissolution from the same governmental entity. To determine whether any approvals are necessary, see N-PCL §§ 404(b)-(v) and 1002(c) and the corporation's certificate of incorporation. Please refer to Appendix E for list of required government approvals.

Note: Attach a copy of the required approvals to the certificate of dissolution.

Quick statutory reference guide	
Government approvals of plan of dissolution	N-PCL §§ 404(b)-(v) and 1002(c)

Step 4: The corporation fills out a certificate of dissolution

Prepare a certificate of dissolution. You can download a blank form for the certificate of dissolution at the Department of State website:

<https://dos.ny.gov/system/files/documents/2018/12/1561-f.pdf>

Tips for filling out the certificate of dissolution	
Name of corporation	Use exact name, including punctuation
Date of incorporation	https://apps.dos.ny.gov/publicInquiry/
Paragraph Eighth	Choose #3 (Plan filed with Attorney General)
Filer	Person filing the certificate of dissolution

The certificate of dissolution confirms that, at the time of dissolution, your corporation had no assets and no liabilities. The certificate of dissolution must be signed by an officer, director, attorney-in-fact, or other duly authorized person and must identify the name of that person and the capacity in which the person signs. Attach all required approvals to the certificate of dissolution (N-PCL §§ 1003(b)(1) and 404(b)-(v)).

Quick statutory reference guide	
Preparation of certificate of dissolution	N-PCL §§ 104(d) and 1003(a)
Attachment of approvals to certificate of dissolution	N-PCL §§ 1003(b)(1) and 404(b)-(v)

Step 5: The corporation petitions the Attorney General for approval of the certificate of dissolution

Prepare a petition to the Attorney General for approval of the certificate of dissolution (see Appendix B). File the petition with the appropriate office of the Attorney General (see Appendix D for Attorney General offices).

Quick statutory reference guide	
Preparation of petition for approval of the certificate of dissolution	N-PCL § 1003(c)

Checklist of what to submit to the Attorney General

- The petition with all required attachments:
 - a copy of the certificate of incorporation, together with any amendments, and the current bylaws
 - the plan of dissolution
 - copies of any required government approvals (attached to the certificate of dissolution)
 - either the unanimous written consent of the board, or certified copies of resolutions adopted at a meeting and, if applicable, the same for the corporation's membership

- All required financial reports, including a final report (*see* Appendix C and the sample verified petition for a list of final reports)

Registration requirements and final reports

Here are some important considerations.

- A not-for-profit corporation seeking to dissolve must be in compliance with the registration and reporting requirements of section 8-1.4 of the Estates, Powers and Trusts Law or Article 7-A of the Executive Law. Read the full text of both statutes as well as a summary of the registration and reporting requirements on the Attorney General's website at: <https://ag.ny.gov/resources/organizations/charities-nonprofits-fundraisers/regulations-statutes>
- If the corporation is subject to the registration and reporting requirements of section 8-1.4 of the Estates, Powers and Trusts Law or Article 7-A of the Executive Law, but has failed to comply, it must register, file annual financial reports (e.g., Attorney General's Form CHAR500 with federal form 990) for the last three years. It must also pay all required filing fees.
- If the corporation is subject to the registration and reporting requirements of section 8-1.4 of the Estates, Powers and Trusts Law or Article 7-A of the Executive Law, but has been exempt from filing annual financial reports, it must submit a summary annual report for the last six years. No filing fees are required to accompany such reports.
- If the corporation is not subject to the registration and reporting requirements of section 8-1.4 of the Estates, Powers and Trusts Law or Article 7-A of the Executive Law, it must submit a summary annual report for the last six years. No filing fees are required to accompany

such reports.

If your petition is acceptable, the Attorney General will provide an endorsement of the certificate of dissolution and return it to your corporation or its attorney, if submitted by an attorney, who must then file it with the Department of State.

Quick statutory reference guide	
Verified petition to the Attorney General	N-PCL § 1003(c)

Step 6: Request a consent to dissolution of a corporation

The organization must request a “consent to dissolution of a corporation” from the New York State Department of Taxation and Finance (tax department). The process and the documentation you will need depend on whether your organization has been granted tax-exempt status (not all charitable organizations have tax-exempt status in New York).

Instructions and forms for securing the tax department’s consent are at:

https://www.tax.ny.gov/bus/doingbus/vol_dissolution.htm. To avoid processing delays, you can make this request at the time you submit the petition to the Attorney General.

Note: If your organization has done business in New York City and has incurred tax or other liabilities under the New York City Administrative Code, it will also need the consent of the Commissioner of Finance of New York City. Download a “request for consent to dissolution” form at:

http://www1.nyc.gov/assets/finance/downloads/pdf/collections/request_dissolution.pdf

Quick statutory reference guide	
Consent of the NYS Department of Taxation	N-PCL § 1004(a)
Consent of New York City Commissioner of Finance	N-PCL § 1004(b)

For corporations filing outside New York City: Check the requirements of your local commissioner of finance.

Step 7: The corporation sends documents and payment to Department of State

The corporation (or its attorney) sends copies of the certificate of dissolution, with clearance from the tax department and the required governmental body or officer consents, along with a check for the required filing fee² payable to the NYS Department of State to:

NYS Department of State Division of Corporations
One Commerce Plaza
99 Washington Avenue

² Check N-PCL § 104-A(1) to determine the amount of the required filing fee.

Albany NY 12231

Step 8: New York state confirms receipt

The Department of State sends the filer a receipt indicating that the certificate of dissolution has been filed.

Step 9: The corporation sends the receipt to Attorney General

Your corporation sends a copy of the Department of State's receipt to the Attorney General. Once the corporation files its final annual financial report with the Charities Bureau (as requested by the petition to the Attorney General), your corporation will no longer be required to file with the Charities Bureau. Its registration will be closed.

Note: If your corporation's final filing year ends after the certificate of dissolution is signed, file your final annual financial report electronically via the Attorney General's website (see instructions at <https://ag.ny.gov/resources/organizations/charities-nonprofits-fundraisers/charities-annual-filing-char500>). If your organization is not required to register with the Charities Bureau, send your final report to the assigned Assistant Attorney General.

Step 10: The corporation checks for Internal Revenue Service (IRS) requirements

Determine whether your corporation is required to file certain documents with the IRS. If so, upon dissolution, submit those documents to the IRS (see "Termination of an exempt organization" posted by the IRS at <https://www.irs.gov/charities-non-profits/termination-of-an-exempt-organization>).

Appendix A: Sample form for a plan of dissolution with no assets

Plan of Dissolution of

The Board of Directors of [name of corporation] has considered the advisability of voluntarily dissolving the corporation and has determined that dissolution is in the best interest of the corporation.

1. The Corporation has no assets or liabilities.

Or

The corporation has no assets to distribute, other than a reserve not to exceed twenty-five thousand dollars for the purpose of paying ordinary and necessary expenses of winding up its affairs including attorney and accountant fees, and liabilities not in excess of ten thousand dollars at the time of adoption of the plan of dissolution N-PCL 1001(c).

2. If applicable: Since the date of its incorporation on (date), (name of corporation) has never been funded and has never had any assets. (NOTE: This statement applies only to corporations that have never received any funds or other assets from any source.)
3. (A.) In addition to Attorney General approval, the following governmental approvals of the Plan are required, and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.

[list governmental approvals]

or

- (B.) Other than the approval of the Attorney General, no approval of

the dissolution of the corporation by any governmental body or officer is required.

A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

(Name of Officer and Title)

(Date)

Appendix B: Sample verified petition to the Attorney General for approval of certificate of dissolution with no assets

.....X
 In the Matter of the Application of
 (Name of Corporation) : VERIFIED PETITION
 For Approval of Certificate of
 Dissolution pursuant to :
 Section 1002 of the Not-for -
 Profit Corporation Law. :
X

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
 OFFICE OF THE ATTORNEY GENERAL
 (Street Address)
 (City/Town), New York (Zip Code)

Petitioner, (Name of Corporation) by (Name and Title of Signatory) of the corporation, for its Verified Petition alleges:

1. (Name of Corporation), whose principal address is located in the county of (Name of County), was incorporated pursuant to New York’s Not-for-Profit Corporation Law on (Date of Incorporation). A copy of the Certificate of Incorporation (and all amendments) and the complete and current By-laws are attached as Exhibit_³
2. The names, addresses and titles of the corporation’s directors and officers are as follows:

Name	Title	Address
3. The purposes for which the corporation was organized are set forth in its Certificate of Incorporation [or relevant amendment] at paragraph_____ thereof and are as follows:

[insert a description of the purposes of the corporation]
4. The corporation is a charitable corporation.
5. The corporation plans to dissolve in accordance with the Plan of Dissolution attached hereto as Exhibit ____ (the “Plan”).
6. The corporation is dissolving because [add a brief explanation of reasons for dissolution.] [Please also note here if the corporation is aware of any ongoing or

³ Please check the Department of State website to confirm that the name of your organization and the stated date of incorporation is consistent with their records.

completed audit or inquiry by the Internal Revenue Service (“IRS”) in the past three years or if the corporation paid any excise taxes or disclosed an excess benefit transaction or diversion of assets on its information returns to the IRS.]

7. (A.) The Board of Directors met at a duly called meeting on proper notice on [date] at which a quorum of _____ directors out of _____ total directors, each of whom in was present in person or electronically in accordance with the requirements of the Not-for-Profit Corporation Law, and [unanimously approved] [approved by _____ votes in favor _____ votes against] resolutions adopting the Plan and authorizing the filing of a Certificate of Dissolution. Such resolution, certified by the Secretary or other duly authorized officer is attached hereto as Exhibit _____.

or

(B.) [The Board of Directors by unanimous written consent] [The sole remaining director by written consent] dated _____ approved resolutions adopting the Plan and authorizing the filing of a Certificate of Dissolution. Such written consent is attached hereto as Exhibit _____.

8. (A)(i). [Include one of these paragraphs only if the corporation has members with voting rights.] After the Board of Directors approved the Plan, the members received and reviewed the Plan and adopted a resolution approving the Plan at a duly called meeting on proper notice on [state date] at which a quorum of _____ members was present [by at least a two-thirds majority consisting of _____ members out of a total of _____ votes, in favor **or** unanimous vote.] Such resolution, certified by the Secretary or other duly authorized officer, is attached hereto as Exhibit _____.

or

(ii). After the Board of Directors approved the Plan, the members received and reviewed it and by unanimous written consent voted in favor of adoption of the Plan. Such unanimous written consent is attached hereto as Exhibit _____.

or

(B.) The corporation does not have any members.

9. The corporation has no assets or liabilities as of the date hereof.

or

The corporation has no assets to distribute, other than a reserve not to exceed twenty-five thousand dollars for the purpose of paying ordinary and necessary expenses of winding up its affairs including attorney and accountant fees, and liabilities not in excess of ten thousand dollars at the time of adoption of the plan of dissolution, N-PCL 1001(c).

10. The corporation has filed a final financial report with form CHAR500, with all required attachments, with the Charities Bureau showing no assets or liabilities and attaching the appropriate registration fee, if required, a copy of which is attached hereto as Exhibit _____.

or

The corporation acknowledges its obligation to file electronically a final financial report with form CHAR500, with all required attachments, with the Charities Bureau showing no assets or liabilities and is submitting such draft herewith as Exhibit _____. The corporation gives its assurance that (i) the final financial report shall be the same in all material respects to that which is attached hereto and, (ii) if registered with the Charities Bureau, the corporation shall duly file timely its final CHAR500 report with all required attachments with the Charities Bureau, pursuant to the Estates, Powers & Trusts Law and/or Article 7-A of the Executive Law.

or

Because the organization is exempt from registration with the Charities Bureau, the corporation is submitting a summary annual report for the last six years in accordance with Appendix C.

11. (A.) Other than the approval of the Attorney General, no approval of the dissolution of the corporation is required by any governmental body or officer.

or

(B.) Copies of any governmental approvals to the Plan are set forth in the Plan and attached to the Certificate of Dissolution.

12. With this Petition, the Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of (Name of Corporation), a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREOF, the corporation has caused this Petition to be executed
This _____ day of _____, 20____, by

Signature

(Name of Signatory and Title)

Note: The signature must be verified (see next page).

Appendix C: Sample financial report for dissolving entities not otherwise required to file annual reports

Note: This schedule is for informational purposes only and illustrates the type of information the Office of the Attorney General reviews regarding dissolving entities otherwise exempt from filing annual financial reports. Such entities may also submit financial reports maintained in the ordinary course of their operations that contain similar information.

Year ended	//	//	//	//	//	//
------------	----	----	----	----	----	----

Statement of revenues and expenses

1	Beginning cash balance					
2	Contributions received					
3	Investment income (interest, dividends)					
4	Rental income					
5	Gains/(losses) from sale of securities					
6	Net proceeds from sale of assets					
7	Other income (itemize)					
8	Total income (add lines 1-7)					

9	Salaries					
10	Legal fees					
11	Accounting fees					
12	Other expenses of dissolution					
13	Occupancy/Rent					
14	Contributions paid (itemize)					
15	Other expenses: (itemize)					
16	Total expenses (add lines 9-15)					

17	Ending cash balance (Line 1 + Line 8 - Line 16)					
----	---	--	--	--	--	--

Balance sheets

18	Cash, savings, investments					
19	Other assets (itemize)					
20	Total assets (Line 18 + Line 19)					
21	Total liabilities (itemize)					
22	Net assets or fund balances (Line 20 - 21)					

Appendix D: Offices of the New York State Attorney General and the counties covered by each

Albany

Charities Bureau
The Capitol
Albany NY 12224-0341
518-776-2160

Counties: Albany, Columbia, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington
(Note: Sullivan and Ulster for trusts and estates matters only)

Binghamton regional office

44 Hawley Street, 17th Floor
Binghamton NY 13901-4433
607-251-2770

Counties: Broome, Chemung, Chenango, Delaware, Otsego, Schuyler, Tioga, and Tompkins

Buffalo regional office

Main Place Tower, Suite 300A
Buffalo NY 14202
716-853-8400

Counties: Allegheny, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, and Wyoming

Nassau regional office

200 Old Country Road, Suite 240
Mineola NY 11501-4241
516-248-3302

Counties: Nassau (Note: Trusts and estates matters are handled by NYC)

New York City

Charities Bureau Transactions Section
28 Liberty Street
New York NY 10005
212-416-8401

Counties: Bronx, Kings, New York, Queens, and Richmond (Note: NYC also handles Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester – trusts and estates matters only)

Plattsburgh regional office

43 Durkee Street, Suite 700
Plattsburgh NY 12901-2958
518-562-3288
Counties: Clinton, Essex, and Franklin

Poughkeepsie regional office

One Civic Center Plaza, Suite 401
Poughkeepsie NY 12601-3157
845-485-3900

Counties: Dutchess, Orange, Sullivan, and Ulster
(Note: Dutchess and Orange County trusts and estates matters are handled by NYC; Sullivan and Ulster County trusts and estates matters are handled by Albany)

Rochester regional office

144 Exchange Boulevard
Rochester NY 14614-2176
716-546-7430

Counties: Livingston, Monroe, Ontario, Seneca, Steuben, Wayne, and Yates

Suffolk regional office

300 Motor Parkway
Hauppauge NY 11788-5127
631-231-2424

Counties: Suffolk (Note: Trusts and estates matters are handled by NYC)

Syracuse regional office

615 Erie Blvd. West, Suite 102
Syracuse NY 13204
315-448-4800

Counties: Cayuga, Cortland, Madison, Onondaga, and Oswego

Utica regional office

207 Genesee Street, Room 508
Utica NY 13501-2812
315-864-2000
Counties: Herkimer and Oneida

Watertown regional office

Dulles State Office Building
317 Washington Street
Watertown NY 13601-3744
315-523-6080

Counties: Jefferson, Lewis, and St. Lawrence

Westchester regional office

44 South Broadway
White Plains NY 10601
914-422-8755

Counties: Putnam, Rockland, and Westchester
(Note: Trusts and estates matters are handled by NYC)

Appendix E: List of governmental and organizational approvals

Section of N-PCL	Organizational purpose	When is consent required?	Which state agency is involved?
404(b)(1)	Destitute children, adult care facility, residential program for youth, unmarried mothers	Before filing	NYS Department of Health (DOH)
404(b)(2)	Child day care center	After filing	Office of Children and Family Services
404(c)	Hospital Service, health service of medical or dental expense indemnity plan	Before filing	NYS DOH
404(d) ⁴	Operation of a school, college or university, museum, or library	Before filing	NYS Education Department
404(d)	Any other corporation whose purposes might be chartered by the Regents	After filing	NYS Education Department
404I	Cemetery Corporation	Before filing	NYS Cemetery Board
404(f)	Fire Corporations	Before filing	Village, Town or City Board
404(g)	Prevention of cruelty to animals	Before filing unless dispensed with	American Society for the Prevention of Cruelty to Animals
404(h)	YMCAs	Before filing	National YMCA
404(i)	Support of armed forces in US or foreign country	Before filing	Adjutant General and the Department of State Post lists of approved organizations
404(j)	Labor Unions	Before filing	Industrial Board of Appeals
404(k)	Savings bank or life insurance	Before filing	NYS Department of Financial Services (DFS), superintendent of banks
404(l)	Licensed insurance agents or brokers or underwriters	Before filing	NYS DFS, superintendent of Financial services
404(m)	Political parties	Before filing	County committee of appropriate party
404(n)	American Legions	Before filing	American Legion Department of NY
404(o)	Hospital corporations	Before filing	Public Health and Health Planning Council
404(p)	Medical corporation	Before filing	NYS DOH and Public Health and Health Planning Council
404(q)	Mental health facility	Before filing	Commissioner of Mental Health
404(r)	Health maintenance organization	Before filing	NYS DOH
404(t)	Facility providing health-related services	Before filing	Public Health and Health Planning Council
404(u)	Substance-abuse programs	Before filing	U.S. Office of Alcoholism and Substance Abuse Services
404(v)	Non-profit Property or casualty insurance	Before filing	DFS, superintendent of insurance

⁴ N-PCL 404(d) has two parts as noted: actual educational organization such as school, library, museum, or college that require “pre-filing consent, and all others require post-filing consent. All post-filing consent is done within 30 days.

