H.453

An act relating to receivership of long-term care facilities

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 33 V.S.A. chapter 71 is amended to read:

CHAPTER 71. ~~LICENSING OF NURSING HOMES~~ REGULATION OF LONG-TERM CARE FACILITIES

Subchapter 1. General Provisions

§ 7101. POLICY

The purpose of this chapter is to provide for the development, establishment and enforcement of standards for the construction, maintenance ~~and~~, operation, provision of receivership and dissolution of ~~nursing homes and similar institutions~~ long-term care facilities in which medical, nursing, or other ~~remedial~~ care is rendered, ~~and of homes for the aged,~~ which will promote safe surroundings, adequate care, and humane treatment, safeguard the health of, safety of, and continuity of care to residents, and protect residents from the adverse health effects caused by abrupt or unsuitable transfer of such persons cared for in these facilities.

§ 7102. DEFINITIONS

~~The following words and phrases, as used in~~ For purposes of this chapter~~, have the following meanings unless otherwise provided~~:

~~(1) "Residential care home" means a place, however named, excluding a licensed foster home, which provides, for profit or otherwise, room, board and personal care to three or more residents unrelated to the home operator. Residential care homes shall be divided into two groups, depending upon the level of care they provide, as follows:~~

~~(A) Level III, which provides personal care, defined as assistance with meals, dressing, movement, bathing, grooming, or other personal needs, or general supervision of physical or mental well-being, including nursing overview and medication management as defined by the licensing agency by rule, but not full-time nursing care; and~~

~~(B) Level IV, which provides personal care, as described in subdivision (A), or general supervision of the physical or mental well-being of residents, including medication management as defined by the licensing agency by rule, but not other nursing care;~~

~~(2) "Therapeutic community residence" means a place, however named, excluding a hospital as defined by statute or the Vermont state hospital, which provides, for profit or otherwise, short-term individualized treatment to three or more residents with major life adjustment problems, such as alcoholism, drug abuse, mental illness or delinquency;~~

~~(3) "Licensing agency" means the agency of human services, or the department or division within the agency as the secretary of human services may designate;~~

~~(4) "Maternity home" means a place, other than a hospital as defined by statute, which maintains and operates facilities, for profit or otherwise, accommodating a person or persons, unrelated to the home operator, who require maternity care;~~

~~(5) "Maternity care" means a high level of nursing care, prescribed by the physician, and medical care required by obstetrical patients prior to delivery, during delivery, and for such period following delivery as the physician may indicate. The term "maternity care" shall also include care of the newborn in accordance with procedures and techniques recommended in "Hospital Care of Newborn Infants," most recent edition published by the American Academy of Pediatrics;~~

~~(6) "Nursing care" means the performance of services necessary in caring for the sick or injured that require specialized knowledge, judgment and skill and meet the standards of the nursing regimen, or the medical regimen, or both, as defined in 26 V.S.A. § 1572(4) and (5);~~

~~(7) "Nursing home" means an institution or distinct part of an institution which is primarily engaged in providing to its residents any of the following:~~

~~(A) Skilled nursing care and related services for residents who require medical or nursing care.~~

~~(B) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons.~~

~~(C) On a 24-hour basis, health related care and services to individuals who because of their mental or physical condition require care and services which can be made available to them only through institutional care;~~

~~(8) "Person" means any individual, corporation, partnership, association, state, subdivision or agency of the state, or any other entity. Whenever used in any provision of this chapter which prescribes or imposes a fine or imprisonment, or both, the term "person," as applied to a firm, partnership or association, shall include the members thereof and, as applied to a corporation, the officers thereof; a firm, partnership, association or a corporation may be subjected as an entity to the payment of a fine;~~

(1) "Assisted living residence" means a program which combines housing, health and supportive services for the support of resident independence and aging in place. Within a homelike setting, assisted living units offer, at a minimum, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Assisted living promotes resident self-direction and active participation in decision-making while emphasizing individuality, privacy, and dignity.

~~(9)~~(2) "Facility" means a residential care home, ~~maternity home,~~ nursing home, assisted living residence, home for the terminally ill, or therapeutic community residence licensed or required to be licensed pursuant to the provisions of this chapter.

~~(10)~~(3) "Home for the terminally ill" means a place providing services specifically for three or more dying people, including room, board, personal care and other assistance for the residents' emotional, spiritual, and physical well-being. ~~A home for the terminally ill shall not be considered a nursing home, residential care home or any other facility regulated by this chapter.~~

~~(11) "Assisted living residence" means a program which combines housing, health and supportive services for the support of resident independence and aging in place. Within a homelike setting, assisted living units offer, at a minimum, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Assisted living promotes resident self-direction and active participation in decision-making while emphasizing individuality, privacy and dignity.~~

(4) "Licensee" means any person, other than a receiver appointed under this chapter, which is licensed or required to be licensed to operate a facility.

(5) "Licensing agency" means the agency of human services or the department or division within the agency as the secretary of human services may designate.

(6) "Nursing care" means the performance of services necessary in caring for the sick or injured that require specialized knowledge, judgment, and skill and meet the standards of nursing as defined in 26 V.S.A. § 1572.

(7) "Nursing home" means an institution or distinct part of an institution which is primarily engaged in providing to its residents any of the following:

(A) Skilled nursing care and related services for residents who require medical or nursing care.

(B) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(C) On a 24-hour basis, health-related care and services to individuals who because of their mental or physical condition require care and services which can be made available to them only through institutional care.

(8) "Owner" means the holder of the title to the property on or in which the facility is maintained.

(9) "Resident" means any person who lives in and receives services or care in a facility.

(10) "Residential care home" means a place, however named, excluding a licensed foster home, which provides, for profit or otherwise, room, board, and personal care to three or more residents unrelated to the home operator. Residential care homes shall be divided into two groups, depending upon the level of care they provide, as follows:

(A) Level III, which provides personal care, defined as assistance with meals, dressing, movement, bathing, grooming, or other personal needs, or general supervision of physical or mental well-being, including nursing overview and medication management as defined by the licensing agency by rule, but not full-time nursing care; and

(B) Level IV, which provides personal care, as described in subdivision (A) of this subdivision (10), or general supervision of the physical or mental well-being of residents, including medication management as defined by the licensing agency by rule, but not other nursing care.

(11) "Therapeutic community residence" means a place, however named, excluding a hospital as defined by statute or the Vermont state hospital, which provides, for profit or otherwise, short-term individualized treatment to three or more residents with major life adjustment problems, such as alcoholism, drug abuse, mental illness, or delinquency.

Subchapter 2. Licensing of Long-Term Care Facilities

§ 7103. LICENSE

(a) A person shall not operate a nursing home, ~~maternity home,~~ assisted living residence, home for the terminally ill, residential care home or therapeutic community residence without first obtaining a license.

(b) A person shall not operate a nursing home as defined in this chapter or as defined in chapter 46 of Title 18 except under the supervision of an administrator licensed in the manner provided in chapter 46 of Title 18.

(c) ~~A person shall not operate a home for the terminally ill without first obtaining a license.~~

~~(d)~~ Residents of a home for the terminally ill ~~shall be admitted to a Medicare-certified hospice and affiliated programs and~~ shall receive necessary medical and nursing services, which may be provided through outside providers. ~~The licensing standards for a home for the terminally ill shall be adopted by the licensing agency after consultation with provider groups, consumers and the general public as determined by the licensing agency.~~

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§ 7105. LICENSE REQUIREMENTS

(a) Upon receipt of an application for license, the licensing agency shall issue a full license when it has determined that the applicant and facilities meet the standards established by the licensing agency. Licenses issued hereunder shall expire one year after date of issuance, or upon such uniform dates annually as the licensing agency may prescribe by regulation. Licenses shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

(b) In its discretion the licensing agency may issue a temporary license permitting operation of a nursing home, assisted living residence, therapeutic community residence, residential care home or ~~maternity~~ home for the terminally ill for such period or periods and subject to such conditions as the licensing agency deems proper, but in no case shall a nursing home, assisted living residence, therapeutic community residence, residential care home or ~~maternity~~ home for the terminally ill operate under a temporary license or renewal thereof for a period exceeding ~~thirty-six~~ 36 months.

(c) ~~[Deleted.]~~ An owner, licensee, or administrator shall disclose to the licensing agency any changes in the ownership interests in the company, ownership of any real property, management of the facility, or corporate structure that occur after the date the license is issued. The licensing agency may require the owner, licensee, or administrator to apply for a new license.

~~(d) In its discretion the licensing agency may issue a temporary license permitting operation of a residential care home for such period or periods and subject to such conditions as the licensing agency deems proper, but in no case shall a residential care home operate under a temporary license or renewal thereof for a period exceeding thirty-six months.~~

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§ 7107. UNLICENSED HOMES

(a) The licensing agency shall promulgate regulations governing the identification of unlicensed residential care homes, nursing homes, assisted living residences, therapeutic community residences, and ~~maternity~~ homes for the terminally ill.

* * *

(e)(1) Within 30 days of the date a license to operate any facility pursuant to this section is revoked or voluntarily relinquished, the operator shall obtain a new license or shall cause all of the residents in the facility to be moved promptly.

(2) The facility shall be responsible for securing suitable alternative placements for the residents and shall be responsible for the cost of the planning for the transition and transportation of the residents to the alternative placements.

(3) Failure to comply with this subsection may result in penalties being assessed against the operator, owner or the facility as provided for in section 7111 of this title.

* * *

§ 7111. ENFORCEMENT; PROTECTION OF RESIDENTS

(a) The licensing agency shall enforce provisions of this chapter to protect residents of facilities.

(b) The licensing agency may require a facility to take corrective action to eliminate a violation of a rule or provision of this chapter within a specified period of time. If the licensing agency does require corrective action:

(1) the licensing agency may, within the limits of resources available to it, provide technical assistance to the facility to enable it to comply with the provisions of this chapter;

(2) the facility shall provide the licensing agency with proof of correction of the violation within the time specified; and

(3) if the facility has not corrected the violation by the time specified, the licensing agency may take such further action as it deems appropriate under this section.

(c)(1) The licensing agency may impose an administrative penalty against a facility for failure to correct a violation or failure to comply with a plan of corrective action for such a violation, as follows:

~~(1)~~(A) up to $5.00 per resident or $50.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily for the administrative purposes of the licensing agency;

~~(2)~~(B) up to $8.00 per resident or $80.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the welfare or the rights of residents; and

~~(3)~~(C) up to $10.00 per resident or $100.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the health or safety of residents~~;~~.

(2) The licensing agency may impose an administrative penalty against a facility of up to $10.00 per resident or $100.00, whichever is greater, for each day a facility operates without a license when either:

(A) the facility has not obtained a license; or

(B) a license has been revoked or voluntarily relinquished and the operator fails to obtain a new license or to cause all of the residents to be moved promptly and appropriately.

~~(4)~~(3) ~~for~~ For purposes of imposing administrative penalties under this subsection, a violation shall be deemed to have first occurred as of the date of the notice of violation.

(d) The licensing agency may, after notice and an opportunity for a hearing, suspend, revoke, modify or refuse to renew a license upon any of the following grounds:

(1) violation by the licensee of any of the provisions of this chapter or the rules adopted pursuant to this chapter;

(2) conviction of a crime for conduct which demonstrates the unfitness of the licensee or the principal owner to operate a facility under this chapter;

(3) conduct inimical to the public health, morals, welfare and safety of the people of the state of Vermont in the maintenance and operation of the premises for which a license is issued;

(4) financial incapacity of the licensee to provide adequate care and services; or

(5) failure to comply with a final decision or action of the licensing agency.

(e) In the interest of the public health, safety and pursuant to the provisions for the summary suspension of a license in subsection 814(c) of Title 3, the licensing agency shall suspend the license of a nursing home which has been administered by a provisional administrator licensed under section 2061 of Title 18 for the preceding 90 days and which nursing home is not presently administered by an administrator who is permanently licensed under section 2055 of Title 18.

(f) The licensing agency may suspend admissions to a facility or transfer residents from a facility to an alternative placement, or both for a violation which may directly impair the health, safety or rights of residents or for operating without a license. Residents subject to transfer shall

(1) be allowed to participate in the decision-making process of the agency concerning the selection of an alternative placement;

(2) receive adequate notice of a pending transfer; and

(3) be allowed to contest their transfer in accordance with the procedures in section 7118 of this title.

(g) The licensing agency, the attorney general or a resident may bring an action for injunctive relief against a facility in accordance with the Rules of Civil Procedure to enjoin any act or omission which constitutes a violation of this chapter or rules adopted pursuant to this chapter.

(h) The ~~licensing agency~~ commissioner of disabilities, aging, and independent living, the attorney general, or a resident or a resident's legal representative may bring an action ~~in accordance with the Rules of Civil Procedure for appointment of a receiver for a facility, if there are grounds to support suspension, revocation, modification or refusal to renew the facility's license and alternative placements for the residents are not readily available~~ as provided for in subchapter 3 of this chapter.

~~§ 7113. INTERPRETATION~~

~~This chapter shall not be construed in any way to restrict or modify any law pertaining to the placement and adoption of children or the care of unmarried mothers.~~

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Sec. 2. 33 V.S.A. chapter 71, subchapter 3 is added to read:

Subchapter 3. Receivership Proceedings

§ 7201. POLICY

The purpose of this subchapter is to provide for the receivership of a long-term care facility in order to ensure safe surroundings, adequate care, and humane treatment; to safeguard the health of, safety of, and continuity of care to residents; and to protect residents from the adverse health effects caused by abrupt or unsuitable transfer of such persons cared for in these facilities.

§ 7202. APPLICATION FOR RECEIVER

(a) The commissioner of disabilities, aging, and independent living or the attorney general may file a complaint in the superior court of the county in which the licensing agency or the facility is located, requesting the appointment of a receiver when:

(1) A licensee intends to close and has not secured suitable placements for its residents at least 30 days prior to closure;

(2) A situation, physical condition, or a practice, method, or operation which presents imminent danger of death or serious physical or mental harm to residents exists in a facility, including imminent or actual abandonment of a facility;

(3) A facility is in substantial or habitual violation of the standards of health, safety, or resident care established under state or federal regulations to the detriment of the welfare of the residents or clients;

(4) The facility is insolvent; or

(5) The licensing agency has suspended, revoked, or modified the existing license of the facility.

(b)(1) A resident or resident's representative may petition the licensing agency or the attorney general to seek a receivership under this section. If the licensing agency or attorney general denies the petition or fails to file a complaint within five days, the party bringing the petition may file a complaint in the superior court of the county in which the licensing agency or the facility is located, requesting the appointment of a receiver on the same grounds listed in subsection (a) of this section. Prior to a hearing for the appointment of a receiver, the commissioner of disabilities, aging, and independent living shall file an affidavit describing the results of any investigation conducted, including a statement of findings with respect to the resident's petition and the reasons for not filing an action under this section. The commissioner shall include the two most recent reports of deficiencies in the facility, if any.

(2) If the court finds the grounds listed in subsection (a) of this section are not met, the court may dismiss the complaint without a hearing as provided for in the Vermont rules of civil procedure.

(c)(1) The licensing agency shall be deemed a necessary party under Rule 19(a) of the Vermont Rules of Civil Procedure. A temporary receiver shall be a necessary party after the temporary receiver is appointed and shall remain a party until a receiver is appointed under section 7204 of this chapter. A receiver appointed under section 7204 of this chapter shall be deemed a necessary party under Rule 19(a) of the Vermont Rules of Civil Procedure.

(2) The entity filing the complaint shall notify the state long-term care ombudsman and the mortgage holder upon filing of the complaint.

§ 7203. APPOINTMENT OF TEMPORARY RECEIVER

(a) A motion to appoint a temporary receiver may be filed with the complaint or at any time prior to the hearing on the merits provided for in section 7204 of this chapter. The motion shall be accompanied by an affidavit alleging facts necessary to show the grounds for the receivership and the necessity for appointing a temporary receiver prior to the hearing on the merits. A motion to prejudgment attachment under Rule of Civil Procedure 4.1(b)(3) may also be filed with the complaint or at any time prior to the hearing on the merits.

(b) The court may appoint a temporary receiver ex parte when the court finds that there is a reasonable likelihood that:

(1)(A) a licensee intends to close the facility and has not secured suitable placements for its residents prior to closure; or

(B) a situation, physical condition, or a practice, method, or operation presents imminent danger of death or serious physical or mental harm to residents; and

(2) the situation must be remedied immediately to ensure the health, safety, and welfare of the residents of the facility.

(c) If the order for temporary receivership is granted, the complaint and order shall be served on the owner, licensee, or administrator and shall be posted in a conspicuous place in the facility no later than 24 hours after issuance.

§ 7204. APPOINTMENT OF RECEIVER; NOTICE

(a)(1) Unless the complaint is dismissed as provided for in section 7202 of this chapter or parties agree to a later date, the court shall hold a hearing on the merits to appoint a receiver within 10 days of filing the complaint. The court shall hold a hearing on the merits even when the court has appointed a temporary receiver as provided for in section 7203 of this chapter.

(2) Notice of the hearing shall be served on the owner, the licensee, the mortgage holder, the state long-term care ombudsman, and the licensing agency not less than five days before the hearing. If the owner or the licensee cannot be served, the court shall specify an alternative form of notice.

(b) The licensee shall post notice of the hearing, in a form approved by the court, in a conspicuous place in the facility for not less than five days before the date of the hearing.

§ 7205. APPOINTMENT OF RECEIVER; RECOMMENDATIONS BY LICENSING AGENCY

Not less than two days prior to the hearing on the merits, the commissioner shall file with the court a list of recommended persons to consider for appointment as the receiver, which may include licensed nursing home administrators or other qualified persons with experience in the delivery of health care services and the operation of a long-term care facility. The list shall include a minimum of three recommended persons and shall include the names and the qualifications of the persons.

§ 7206. APPOINTMENT OF RECEIVER; HEARING AND ORDER

(a) After the hearing on the merits, the court may appoint a receiver from the list provided by the licensing agency if it finds that one of the grounds in section 7202 of this chapter is satisfied, and that the person is qualified to perform the duties of a receiver as provided for in section 7205 of this chapter.

(b) The court shall set a reasonable compensation for the receiver and may require the receiver to furnish a bond with surety as the court may require. Any expenditure, including the compensation of the receiver, shall be paid from the revenues of the facility.

(c) The court may order limitations and conditions on the authority of the receiver provided for in section 7207 of this chapter. The order shall divest the owner and licensee of possession and control of the facility during the period of receivership under the conditions specified by the court.

(d) An order issued pursuant to this section shall confirm on the receiver all rights and powers described in section 7207 of this chapter and shall provide the receiver with the authority to conduct any act authorized under this section, including managing the accounts, banking transactions, and payment of debts.

(e) An order appointing a receiver under this chapter has the effect of a license for the duration of the receivership and of suspending the license of the licensee. The receiver shall be responsible to the court for the conduct of the facility during the receivership, and a violation of regulations governing the conduct of the facility, if not promptly corrected, shall be reported by the licensing agency to the court. The order shall not remove the obligation of the receiver to comply with all relevant federal and state rules applicable to the facility.

(f) The court shall order regular accountings by the receiver at least semi-annually.

§ 7207. POWERS AND DUTIES OF RECEIVER

(a) A receiver shall not take any actions or assume any responsibilities inconsistent with the purposes of this subchapter or the duties specifically provided for in this section.

(b) Unless otherwise ordered by the court and subject to the limitations provided for in sections 7208 through 7211 of this chapter, the receiver appointed under this subchapter shall:

(1) notify residents of the receivership and shall provide written notice by first-class mail to the last known address of the next of kin after the facility is placed in receivership;

(2) operate the facility;

(3) remedy the conditions that constituted grounds for the receivership;

(4) remedy violations of federal and state regulations governing the operation of the facility;

(5) protect the health, safety, and welfare of the residents, including the correction or elimination of any deficiency of the facility that endangers the safety or health of the residents;

(6) preserve the assets and property of the residents, the owner, and the licensee;

(7) hire, direct, manage, and discharge any employees, including the administrator or manager of the facility;

(8)(A) Apply the revenues of the facility to current operating expenses;

(B) Receive and expend in a reasonable and prudent manner the revenues of the facility due during the 30-day period preceding the date of appointment and becoming due thereafter; and

(C) To the extent possible, apply the revenues of the facility to debts incurred by the licensee prior to the appointment of the receiver;

(9) continue the business of the facility and the care of residents;

(10) file monthly reports containing information as required by the licensing agency to the owner and the licensing agency; and

(11) exercise such additional powers and perform such additional duties as ordered by the court.

§ 7208. LIMITATIONS; CORRECTION OF CONDITIONS

(a)(1) Except as provided for in subsection (b) of this section, if the total cost of correcting conditions that constituted grounds for the receivership and violations of federal and state regulations governing the operation of the facility or of other health and safety issues exceeds $5,000.00, the receiver shall notify the mortgage holder, licensee and owner of the conditions needing correcting and the estimated amount needed to correct the condition.

(2) The mortgage holder, owner, or licensee shall have five days from the date of mailing of the notice to apply to the court to determine the reasonableness of the expenditure by the receiver.

(3) If the mortgage holder, owner, or licensee files a motion objecting to the corrections, the receiver shall not correct the conditions until ordered by the court.

(b) If the condition constitutes a situation, physical condition, or a practice, method, or operation which presents imminent danger of death or serious physical or mental harm to residents and the estimate and the total cost of the correction exceeds $10,000.00, the receiver shall notify the mortgage holder, owner, and licensee who may object to the court as provided for in subsection (a) of this section. The receiver may proceed with the corrections pending a hearing and order of the court.

§ 7209. LIMITATIONS; PAYMENT OF DEBTS

The receiver shall petition the court when debts incurred prior to appointment of the receiver appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the facility; or where payment of the debts will interfere with the purposes of the receivership. The court shall determine the order of priority of debts with first priority given to expenditures for direct care of current residents.

§ 7210. LIMITATIONS; AUTHORITY TO BORROW

(a) In the event that the receiver does not have sufficient funds to cover expenses needed to prevent or remove jeopardy to the resident or to pay the

debts accruing to the facility, the receiver may petition the court for permission to borrow for these purposes.

(b) Notice of the receiver's petition to the court for permission to borrow must be given to the owner, the licensee, the mortgage holder, and the licensing agency.

(c) 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 should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy, or if it determines that the facility should be closed and that the expenditure is necessary to prevent or remove jeopardy to residents for the limited period of time when they are awaiting transfer.

§ 7211. LIMITATIONS; CLOSURE OF THE FACILITY

(a) The receiver may not close the facility without leave of the court.

(b) The court shall consider the protection of residents and shall prevent the closure of facilities that, under proper management, are likely to be financially viable. 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.

(c) In ruling on a motion to close the facility, the court shall consider:

(1) The rights and best interests of the residents;

(2) The availability of suitable alternative placements;

(3) The rights, interest, and obligations of the owner and licensee;

(4) The licensure status of the facility; and

(5) The need for the facility in the geographic area.

(d) When a facility is closed, the receiver shall provide for the orderly transfer of residents to mitigate trauma caused by the transfer to another facility.

§ 7212. WRIT OF POSSESSION

After notice and a hearing, the court may issue a writ of possession as provided for in section 4854 of Title 12 on behalf of the receiver for specific real or personal property related or pertaining to the facility.

§ 7213. ATTACHMENT; TRUSTEE PROCESS

Revenues held by or owing to the receiver in connection with the operation of the facility are exempt from attachment as provided for in chapter 123 of Title 12 and trustee process as provided for in chapter 121 of Title 12, including process served prior to the institution of receivership proceedings.

§ 7214. AVOIDANCE OF CONTRACTS

(a) The court may grant a motion filed by the receiver to avoid a lease, mortgage, secured transaction, or other contract entered into by the owner or licensee of the facility if the court finds that the agreement:

(1) was entered into for a fraudulent purpose or to hinder or delay creditors;

(2) including a rental amount, price, or rate of interest, was unreasonable or excessive at the time the agreement was entered into; or

(3) is unrelated to the operation of the facility.

(b)(1) The receiver shall send notice of the motion to any known owners and mortgage holder of the property, the licensing agency, and the state long-term care ombudsman at the time of filing.

(2) The court shall hold a hearing on the receiver's motion to avoid a contract within 15 days.

(c) If the receiver is in possession of real estate or goods subject to a contract or security interest that the receiver is permitted to avoid under this section and if the real estate or goods are necessary for the continued operation of the facility, the court may set a reasonable rental amount, price, rate of interest, or of replacement contract term to be paid by the receiver during the term of the receivership.

(d) 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 notice.

(e) Notwithstanding this section, 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.

§ 7215. OBLIGATIONS OF THE OWNER OR LICENSEE

(a) A licensee, owner, manager, employee, or such person's agent shall cooperate with the receiver in any proceeding under this chapter, including replying promptly to any inquiry from the receiver or the licensing agency requesting a reply, and making available to the receiver any books, accounts, documents, or other records or information or property pertaining to operation of the facility in his or her possession, custody, or control. A person shall not obstruct or interfere with the receiver in the conduct of any receivership.

(b) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for receivership or revocation or suspension of licensure.

(c)(1) After notice of the receiver's appointment, a person who fails to cooperate with the receiver or any person who obstructs or interferes with the receiver in the conduct of the receivership shall be assessed a civil penalty of not more than $10,000.00.

(2) A person who violates this subsection may be subject to the revocation or suspension of a nursing home administrator's license or a license to operate a facility.

§ 7216. REVIEW AND TERMINATION

(a) The court shall review the necessity of the receivership at least semiannually.

(b) Either party or the commissioner of disabilities, aging, and independent living may petition the court to terminate the receivership. The petition shall include a certification from the commissioner or designee that the conditions that prompted the appointment have been corrected or, in the case of a discontinuance of operation, when the residents are safely relocated.

(c) The petitioner shall send notice of the petition to terminate the receivership to the mortgage holder, the licensing agency, and the state long-term care ombudsman at the time of filing.

(d) A receivership may not be terminated in favor of the former or the new licensee, unless that person assumes all obligations incurred by the receiver and provides collateral or other assurances of payment considered sufficient by the court.

(e) At the time of termination of the receivership, the court shall lift the suspension or revoke the license of the licensee.

§ 7217. DUTIES OF LICENSING AGENCY

The licensing agency shall have the duty to provide information to residents of long-term care facilities for which a receiver has been appointed by the court. When applicable, the licensing agency shall assist in the process of transferring residents to another long-term care facility, including providing information about facilities with available openings.

Sec. 3. REPORT; DAIL

No later than January 15, 2011, the department of disabilities, aging, and independent living shall report to the house and senate committees on judiciary with information on the number of receivership proceedings which have been filed and the disposition of the proceedings. The department shall solicit comments and information from the long-term care ombudsman and Vermont Health Care Association, Inc. on the content of the report. The department shall include in the report any suggestions for revisions to subchapter 3 of chapter 71 of Title 33.

Sec. 4. SUNSET

(a) Sec. 2 of this act (33 V.S.A. chapter 73, subchapter 3) shall expire on June 30, 2011.

(b) Upon expiration of Sec. 2 of this act, 33 V.S.A. § 7101 shall be amended by striking the term “, provision of receivership and dissolution”.