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Thanks for the opportunity to speak today. Nursing Home transfers has been a topic of concern for the Green Mountain Care for some time.

I thought I would start with a very brief history of the purpose Certificate of Need laws—important to this conversation.

Certificate of need laws came into existence in the 60s and 70s—time period of high growth in health care expenditures with very little cost containment. Hospitals grew by attracting doctors and patients through the adoption of the latest and greatest technology (one hospital adds a new imaging machine, the hospital next door had to add one too)...in the literature it is often referred to as an Medical Arms Race.

CON regulation was designed to curb overbuilding of health care infrastructure and reduce costly duplication of services (Large fixed costs must be covered with higher prices – expenditures spiral upward...).

CON meant to approve only those new health care investments that fill **unmet needs** in the community...

1974: Feds tied Fed funding to CON programs so that by early 80s almost every state had a CON program in place. In 1987, Fed funding mandate repealed. 35 states still have CON laws. 15 dropped them. It should be noted that VT regulates more activities through CON than any other state (see www.ncsl.org).

Again, the point is that CON laws are designed to **prevent costly duplication of services**—Its focus is meant to be on **ensuring that the**

addition of new facilities, new equipment, new services are appropriate and warranted. Language in VT statute specifically refers to CON as pertaining to the development of a “*new* health care project or new service”

Transfer of ownership of nursing homes is not about assessing unmet need, it is not about preventing the costly duplication of services, it is not about a change in capacity, it is not about resource allocation, it is not about a new service or facility.

It is about a **change in ownership** of an existing facility. It is about the **transfer of a license to operate from one entity to another**. It is about **whether the transferee is a suitable licensee, under accepted licensing standards**.

The GMCB is not, and was never envisioned as a licensing body.

The GMCB does not regulate nursing homes. We have no jurisdiction over nursing home quality, nursing home budgets, or nursing home rates. We do not have expertise in the financing of long term care, the setting of Medicaid rates, or the ongoing review and assessment of quality of care. You will see from Kathleen’s testimony soon that she has incredible expertise in both the financing and business practices in the nursing home industry. We are also not a CMS – certified survey entity with experience in monitoring quality.¹

In sum, transfers of nursing homes do not belong in CON. The CON process is ill-suited. The statutory criteria—that every CON project are

¹ Please note that later in the discussion, I described the relatively high weight that I, as one Board Member, place on the recommendation the Board receives from DAIL in the CON process (as mandated by HRAP CON Standards 5.2 and 5.2). In their recommendation letter, they offer an assessment of both the quality and the financial background of the applicant which, given their expertise, weighs heavily in my decision-making.

required to meet— are not appropriate for evaluating transfers. The CON process is unnecessarily costly and time consuming for nursing home applicants (up to \$300k in legal fees and other costs) which reduces the pool of willing suitors and is extremely inefficient (backing up other relevant CON applications). And at the end of the day, our CON review does not further protect VT's most vulnerable population. We have little power to hold owners accountable for what happens after the transfer, and authority over quality and rates is outside of our jurisdiction. We issue the CON and it is out of our hands. It is up to Dept of Rate Setting, Licensing and Protection, and DAIL to license the entity, monitor business practices and ensure quality.

Because there are multiple entities involved, the current regulatory process is neither seamless nor holistic nor continuous. There are many gaps that fail our most vulnerable. And given the recent trends in out of state, for-profit corporations buying up small mom and pop nursing homes, operating them at arms-length and extracting short term gains, there is no more important time than the present to shore up VTs regulatory process.

It is the opinion of the Board, after reviewing approximately a dozen transfers and examining the process with staff and with a workgroup of divergent stakeholders, that nursing home transfers should be overseen by the entity or entities that license the facility, oversee the quality, and set the rates.

We fully recognize the resource constraints that exist, but we hope steps can be taken to reallocate the resources to ensure oversight over transfers is more rigorous and is done by the most qualified and appropriate agencies. I would be happy to work with others in the State to think about where this oversight should live, but I remain firmly convinced that it is not in the CON process nor at the GMCB.