

DRS's Role with Nursing Facilities

- ▶ At the Division of Rate Setting (DRS) we set Medicaid rates for nursing facilities based on actual past costs.
- ▶ We review these costs to ensure that all costs that might be the basis for a rate are allowable per the Vermont Division of Rate Setting Rules, Medicaid Covered Services Rules and CMS-15.
- ▶ DRS seldom works with current costs and prospective budgeted costs.
- ▶ DRS collects census data on Medicaid nursing home usage.
- ▶ DRS tracks profit and loss of nursing home providers to be able to assess their financial health.

Oversight of Nursing Home Transfers

- ▶ The Division of Rate Setting feels that there needs to be a powerful vetting process for new owners before they are allowed to purchase a Vermont nursing home.
- ▶ If a potential buyer or buying group has a terrible reputation for care in other states, the State should protect nursing home residents from having their “home” purchased by such buyers.
- ▶ If there is no approval process, the State gives up their one chance to stop a transfer from happening.
- ▶ Once a home is sold, the buyers are in the driver’s seat and can do anything they want with the finances of the facility. If this process is done away with, it is likely that no process would replace it due to resource issues through out State government.

Recent Trends the Division is Seeing

- Recent Purchasers of Vermont nursing facilities have been:
 - Large out-of-state corporations that own hundreds of nursing homes nationwide.
 - Conglomerates owned by 3-20 separate investors.

Risky Business Practices

The Division is seeing the following financial practices which extract money from the nursing homes quickly.

- Sale of nursing home real estate to Real Estate Investment Trusts (REITs), with expensive leases to the nursing home operator. The money from the sale is used by the parent company to purchase and acquire more nursing facilities. The Division has not seen the money go back into the existing facilities.
- Splitting operations and real estate into separate LLCs and leasing the real estate to the operating LLC at 2X-3X the cost of ownership.
- Using related parties to provide many of the goods and services.

What is the problem with nursing homes separating operations from ownership of the real estate?

- ▶ Selling the real estate of a nursing home to a REIT or other party has resulting in many instances of exorbitant lease back agreements. The monthly lease payments are then many times higher than if the provider kept the ownership of the building.
- ▶ The inflated amounts are not considered allowable costs for Medicaid reimbursement, so the Medicaid rate no longer covers large expenditures on “rent” paid to the REIT or other related party.
- ▶ This leads to troubled finances which then affect care and the ability of the new provider to keep operating the nursing home.

Why are nursing homes doing this?

- These are mechanisms to get money out of the nursing facilities quickly, while depleting the viability of these homes and starting a downward spiral to closure in 5-8 years in our estimation.
- These expensive leaseback practices are not recognized when setting the Medicaid rate.
- This means the nursing facilities have hundreds of thousands of dollars each year that their Medicaid rate is not reimbursing them, which puts them on shaky financial ground.

New important aspects of transfer of ownership reviews.

- There needs to be ongoing controls on sales of nursing home real estate to entities that will turn around and charge the nursing home an exorbitant rent.
- There needs to also be a process beyond the initial approval so the State can regulate and control sales of nursing home real estate away from the operations of the nursing home to entities such as REITs or other lessors.
- There could be stipulations on what happenings at nursing homes would require additional review and approval down the road.

Who have been the buyers of Vermont nursing homes recently?

- The trend in the State is to have buyers who are groups of 3-20 individuals from the New York City/New Jersey area who all own a small share in many nursing homes across the country. This is a trend in New York State as well.
- These buyers have a web of related companies that they use as their vendors and contractors.
- With these buyers, we have found it difficult to examine books and records kept with out of state contracted accounting staff.

Why is it hard to find local buyers?

- Market is chilled by:
 - CON process is long and expensive, which is a consideration for a potential buyer.
 - Rates that penalize operators for running lower than 90% occupancy when the average statewide nursing home occupancy has fallen to about 82%.
 - Caps on rate components that don't consider factors such as the size of the facility or whether the facility is operated by a hospital.
 - On average provider's had a 2% loss for 2016. Outcomes varied from a 29% loss to a 12% gain. 18 of 36 homes had losses and some were very large losses.

Why are Vermonters not buying nursing homes?

- Not seeing interest or ability to buy a nursing home by Vermont residents.
- Not see as a good investment as many homes struggle with low occupancy and operating losses.
- The Medicaid rates have a 90% occupancy limit and median caps built into the rate calculations which severely limit the rates to many providers.
- Hard to finding nursing staff. Many homes have to use “Agency/Contract Nursing” staff and this costs two to three times the cost of nursing staff. These new cost increases for Agency Nursing will not be in the Medicaid rates until the rebase of costs on 7/1/19. These increased costs will cause even greater losses in the meantime and may threaten the continued operations of some nursing homes.

Should There Be a CON-Type Process for Nursing Home Transfers?

Yes. A CON-type process is necessary for nursing home transfers.

Two Competing Interests:

1. How do we protect our most vulnerable populations who need nursing facility care?
2. How do we create an environment that attracts purchasers who are looking for a long-term investment versus short-term?

CON-Type Transfer of Ownership Process Needs to Focus on the Evolving Trends with Nursing Home Sales

Possible Improvements/Remedies to this Process Include:

- ▶ The transfer of ownership review process should be updated and improved to be faster, easier and more focused. There needs to be an ongoing process where the sale of real estate is subject to State approval.
- ▶ Events that automatically trigger the CON-type re-review (i.e. sales to a REIT and splitting property and operations into separate LLCs).
- ▶ Limiting the amount of back and forth questions about quality and staffing as these will be addressed by DLP once the new owners are operating.

What do we do?

- ▶ Answer is not to stop but to do the review differently.
- ▶ There needs to be teeth to this process. We need to be willing to push purchasers to do what is best for long term financial survival of the nursing homes.