
Nursing Home Oversight

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Recap: Regulation Who Does What

- **Centers For Medicare & Medicaid Services (CMS):** federal regulation of all aspects of care delivery, health and safety - federal inspections.
- **DAIL/DLP/APS:** state regulation to obtain a license to operate a facility consistent with federal and state health and safety regulations; conducts annual state and federal inspections and complaint investigations; conduct investigations related to allegations of abuse, neglect, exploitation.
- **Office of Professional Regulation:** licenses Nursing Home Administrators; requirements for training, and competency; regulates unprofessional conduct/discipline.
- **Board of Nursing:** licenses APRN, RN, LPN, MNA, LNA; regulates training, competency, standards of practice, and unprofessional conduct/discipline for these professions working in nursing facilities.
- **Division of Rate Setting:** establishes Medicaid rates for nursing facilities; determines Extraordinary Financial Relief when necessary.
- **Green Mountain Care Board:** Certificate of Need for transfer of ownership of nursing facility; or building a new nursing facility; or adding more nursing facility beds or services.



Regulatory- Ownership

Federal Rules- 42 CFR Part 483, Subpart B- CMS requires disclosure of ownership, or financial or controlling interest, to Medicaid and Medicare:

- Upon submission of provider application
- Upon execution of provider agreement
- Upon change of ownership
- At time of survey (compliance)

Failure to comply with federal rule- don't get paid

State (DLP) licensure requirements also govern disclosure of ownership, Rule 17.2:

- Upon application for licensure, which is required to operate- a license is required to receive a provider and billing number for Medicaid and Medicaid
- Ongoing obligations to disclose at time of any change, if a change occurs in:
 - Person with an ownership or controlling interest of 5% or more, or convicted of Medicaid Fraud
 - Officers, directors, agents, managing employees
 - Corporation, association, or other company responsible for management
 - Administrator or director of nursing



Themes:

Primary goal: ensure high quality nursing facility services for residents.

1. Ensuring potential purchaser is sufficiently capitalized to purchase an existing facility.
2. Vetting potential purchasers to satisfy the desire for high quality owners.
3. Ensuring ongoing financial stability of facilities to prevent financial related collapse.
4. Separation of ownership of real estate (land/buildings/fixed assets) from operations, and any impact on financial health of facility.



Landscape

Nursing Home Closures Resulting from Loss of CMS Certification Since 2008

- McGirr (2012)- long time VT independent owner
- Brookside (2017)- new owner

Ownership of Real Estate and Operations

Why is ownership separated? Liability and tax reasons

- REITs - 3
- Related LLCs – the vast majority including independent owners
- Third party LLCs- very few



How to Tackle the Themes:

1. Ensuring potential purchaser is solvent and able to purchase an existing facility.

- GMCB held stakeholder process last year- unanimous agreement to eliminate CON for transfer of ownership.
- Looks at quality, cost of the project, purchasers' financials- gets information from DAIL/DLP/Rate Setting.
- Quality is handled by DAIL/DLP/regulatory boards. Cost and rates by Rate Setting.
- Currently conducts an analysis of whether or not the purchaser is sufficiently capitalized but also does a financial/cost analysis of the project itself- is it a good project financially?
- Since transfers of ownership are not new health care projects but transfers of existing businesses, the question should be can the entity obtain financing. This is the role of the financial institution.
- Adequate capitalization to purchase is not the reason a facility closes.
- CON review for transfer of ownership should be repealed.



How to Tackle the Themes, cont.

2. **Vetting potential purchasers to ensure high quality owners.**

This is an important and fair question. We should look at whether there are gaps in the current process.

Conceptually improving the process to ensure a review of the history of purchaser is conducted is fair and reasonable.

Criteria need to be clear and objective.

Likely most effectively addressed in the licensing process.



How to Tackle the Themes, cont....

3. Ensuring ongoing financial stability of facilities to prevent financial related collapse.

Rate Setting:

- Sets Medicaid rates for nursing facilities based on cost reports and audited financials
- Facilities submit cost reports/audited financials within 5 months of the close of the fiscal year, every year
 - i.e. A December fiscal year end results in May filing; A September fiscal year end results in February filing
- Desk review of cost reports/audited financials by Rate Setting generally occurs 18-24 months post submission and it is done for purposes of establishing rates – rates are behind in terms of keeping up with costs (as evidenced by the cost reports/audited financials) by 2-4 years. This is also why nursing home inflation is important every year.
- Rate Setting has the most updated, reliable information (audited financials) to determine whether financial stability is in question. But it's not currently their role to review for stability on an ongoing basis, or address it until...
Extraordinary Financial Relief – which facilities cannot request until they are on the brink of financial collapse. We need to find a way to address this before it gets to that point.



How to Tackle the Themes, cont....

Ensuring ongoing financial stability, cont.....

- On average, 62% of utilization in nursing facilities is Medicaid.
- Reimbursement structure is critical and rate setting regulations need a fresh look based on changes in the industry, i.e. occupancy limits, resident and nursing caps, use of contract nurses which spike costs that a facility cannot recover timely.
- Need to address time frame for Medicaid eligibility to be determined (DVHA)- delays of 6-9 months in eligibility determinations results in significant cash flow problems in the range of \$100k+ at any given time, and facilities cannot recover “bad debt” from failure of a resident/family to pay if Medicaid denies eligibility. Bad debt is not an allowable cost that gets factored into the rate.



How to Tackle the Themes, cont....

4. Separation of ownership of real estate (land/buildings/fixed assets) from operations, and any impact on financial health of facility.

VHCA has begun discussions with Rate Setting on this issue. To the extent there are continued concerns, the forum for the discussion is in the context of #3 – review of the rate setting regulations.



Where Do We Go From Here?

These are important and in some instances complex questions.

Need a review and response that is proportionate to identifiable and concrete concerns.

Need a timely resolution- the regulatory system needs to be clear, predictable, and function in a timely manner.

Industry is open and willing to work with its regulators to address these concerns in the most effective and efficient manner.

