

Nursing Home Oversight Committee Report

House Human Services Committee
February 7, 2019

Overview

Act 125 of 2018 established a nursing home oversight working group to “examine the oversight of nursing homes in Vermont, including financial stability and licensing criteria, in order to ensure the provision of high-quality services and a safe and stable environment for nursing home residents.”

Act 125 outlined the following six specific areas to address:

1. Identify procedures to monitor nursing homes’ ongoing financial stability and ways to identify nursing homes in financial distress
2. Determine the types of financial data that may be necessary to evaluate ongoing financial stability
3. Review, in consultation with the Green Mountain Care Board, the criteria the Board considers in its review of applications for transfer of ownership
4. Determine the regulatory entity or entities and resources needed to monitor quality of care and financial stability
5. Review current nursing home application and licensure requirements and identify any necessary changes
6. Review the Division of Rate Setting’s rules regarding Medicaid reimbursements to nursing homes

Executive Summary

In summary, the nursing home working group make the following observations and conclusions:

Transfer or Ownership

The working group agreed that there should not be a Certificate of Need process for the transfer of ownership of nursing homes. However, the working group does believe there should be an Enhanced Licensing Process that includes a financial review of transfer of ownerships housed at the Agency of Human Services.

Ongoing Financial Stability

The Division of Rate Setting (DRS) is in receipt of financial information from Nursing Homes as part of setting the Medicaid reimbursement rates. The available financial, quality, and resident experience information can be reviewed together to identify potential signals of financial distress. The working group did not find there to be any reason to change where the financial and quality monitoring currently lives today.

Rates

After review of the various items within the Division of Rate Setting rules, the working group recommends that the occupancy limit be lowered to 85%.

Transfer of Ownership – Financial Review

The group agreed there should be a financial review of the purchaser proposing to purchase a Vermont nursing home and recommended the following:

- The creation of the Transfer of Ownership-Financial Review Committee, which will be housed with the Department of Vermont Health Access (DVHA)
- The creation of a Transfer of Ownership-Financial Review application. Documentations to included:
 - The application would include a letter of intent/commitment for financing from a financing entity
 - Description of transaction
 - Evidence of ability to provide adequate cash flow to operate
 - Documentation that applicant is in good standing with all taxing authorities.
 - Additional documentation for review can be found in the [Nursing Home Oversight Working Group Report](#)
- The group also recommended the Financial Review Committee conduct a court record review. The court record review would assist to identify whether there are any legal actions against any of the applicants to include, but not be limited to, bankruptcy, receivership actions, and vendor payment issues.

Transfer of Ownership – Financial Review

The materials requested in the Transfer of Ownership – Financial Review process will be submitted to the Department of Vermont Health Access (DVHA).

- The financial review process shall be completed within 60 days, including a the determination of the application being deemed complete within 30 days, and the Enhanced Licensing Process (ELP) process shall be completed in 90 days
- Upon completion of the financial review, DVHA will issue a written recommendation to DLP, which will be a factor considered by DLP when granting a new license through the ELP.
- The financial review may include the applicant(s) meeting with DVHA staff as part of meeting with DLP staff to review the application and respond to questions or concerns
- Within 60 days after the application is deemed complete the DVHA Commissioner or designee shall issue a written notice of decision approving or denying the application. The written notice of decision will include findings of fact and conclusions of the DVHA Commissioner or designee

Enhanced Licensing Process Proposal (ELP)

The Enhanced Licensing Process (ELP) for Changes in Ownership is designed to provide a deeper examination of factors that may influence quality outcomes to residents at the time of a change in ownership of a nursing home

- The process includes an examination of the qualifications and compliance history of purchasers' ability to operate a high-quality nursing home
- The ELP process includes a provision for a qualified, independent professional to monitor the operations of a nursing home, should DAIL deem that necessary
- An onsite survey would be conducted prior to the purchase and transfer, to evaluate the health and safety of residents under the current operators of the facility, which would inform a monitoring plan for the new operators
- The new ELP will not be used for ongoing monitoring, but the more robust application will better assist DAIL in understanding future applicants and their history of operation

Enhanced Licensing Process Proposal (ELP)

Criteria required in the ELP include a completed licensing application as well as the following materials:

- Curricula vitae from relevant principals
- Organizational chart of proposed ownership structure
- Administrator, Director of Nursing, and Medical Director information
- For each nursing home owned by the applicant with a 5% or more ownership interest:
 - Name and locations of each nursing home
 - CMS star rating at time of purchase and three (3) most recent years
 - Copies of recertification surveys or complaint investigations during most recent three years and any include any pending enforcement actions
 - Identify whether any potential buyers is/has ever been prohibited from purchasing or operating a Long-Term Care facility in any state
 - Identify if any potential buyers is under investigation for Medicaid or Medicare Fraud or is prohibited from participating in Medicare or Medicaid, in any state
 - Identify if the potential buyers are planning to utilize the services of a management group or company
 - Identify if the potential buyers are planning to utilize companies or corporations already affiliated with potential buyers, and if so, identify the relation and correlating ownership interest
 - National criminal background check and abuse registry on all principals

Enhanced Licensing Process Proposal (ELP)

- The licensing application will be reviewed for completeness within thirty days, and once the application is considered complete, the licensing entity (DLP) will have sixty days to complete the remainder of the process.
- During this review period, DLP will be soliciting information and/or comments from the Vermont Long Term Ombudsman and from the licensing entities in other states where the purchasers operate.
- The licensing agency may require a face to face meeting with all principals at the licensing agency office, which may also include members of the Transfer of Ownership-Financial Review team within DVHA
- An onsite survey will be conducted at the facility by the licensing agency within sixty (60) days of the submission of a complete licensing application to assess the compliance of the nursing home.
 - Based on the results and the information collected during the application review process, the licensing agency will either determine that no independent monitoring is needed or will mandate the use of an independent, qualified consultant.
- Will receive financial review committee determination as part of the overall consideration for licensing.