

TO: SENATE COMMITTEE ON HEALTH AND WELFARE  
FROM: SEAN LONDERGAN, STATE LONG-TERM CARE OMBUDSMAN  
RE: H. 635  
DATE: JUNE 3, 2020

- My understanding: The proposed bill is the State’s response to issues that it encountered during the Pillsbury receivership in late 2018-2019.
- The bill addresses three issues/concerns that arose for the State during the Pillsbury receivership:
  - (1) Authorizing the Department of Disabilities, Aging, and Independent Living to take immediate enforcement action to eliminate a condition that can be reasonably expected to cause **mental harm** to residents or staff;
  - (2) Adding a definition of “**insolvent**” to be applied in the context of the regulation of long-term care facilities; and
  - (3) Prohibiting any actions taken by a court-appointed temporary receiver from being used by a long-term care facility in support of its opposition to the Department’s request for a receivership.
- **Proposed change #1 – amends 33 V.S.A. § 7110(b).**
  - Adding term “mental harm” expands current scope of 33 V.S.A. § 7110(b), allowing the state (Survey & Certification) to take immediate enforcement action when necessary to eliminate a condition that can reasonably be expected to cause . . . mental harm to residents or staff “ (adding term “mental harm”).
    - The initial complaints that the VOP received from residents at the Pillsbury properties were that ownership was not accepting rent checks (beginning in Feb./March of 2019 and continuing for months).
    - Residents were very anxious and concerned about this, particularly as time went by.
      - Survey & Certification received complaints, but felt handcuffed because ownership’s failure to cash/accept rent checks was not actionable.
- **Proposed change #2 – amends definition section, § 7102: 33 V.S.A., to include the term “insolvent”:**
  - Title 33, Chapter 71 (“Regulation of Long-term Care Facilities”) does not include a definition for “insolvent”.
  - The chapter does now use the term “insolvent” (e.g., § 7202(a)(4) – Receivership Proceedings), despite it not being currently defined.
  - The proposed definition:
    - [(12) “Insolvent” means: (A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute; (B) being unable to pay debts as they become due; or (C) being insolvent within the meaning of federal bankruptcy law.]

- The proposed definition appears to cover at least one of the circumstances observed in the Pillsbury case.
  - (Ownership, it is my understanding, “ceased to pay debts in the ordinary course business other than the result of bona fide dispute”).
- **Proposed change #3 – 33 V.S.A. § 7206 is amended to read:**
  - Adding the following language to 33 V.S.A. § 7206:
    - The court’s determination of whether one or more of the grounds set forth in section 7202 of this chapter is satisfied shall be based on the condition of the facility **at the time the complaint requesting the appointment of a receiver was filed**
      - The proposed language addresses the Pillsbury case – at trial Pillsbury was arguing the receivership was not needed because of the work done by receiver.
  - I understand, and agree with, the State’s desire to add this language.
- **The Vermont Long-Term Care Project supports H. 635.**