

CHAPTER 95
(CORRECTED COPY)

AN ACT concerning nursing homes, amending P.L.1987, c.322, and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1987, c.322 (C.26:2H-7.2) is amended to read as follows:

C.26:2H-7.2 Exemption from certificate of need.

1. Notwithstanding the provisions of section 7 of P.L.1971, c.136 (C.26:2H-7) to the contrary, a nursing home which proposes to increase the total number of licensed beds contained therein by not more than 10 beds or 10% of its licensed bed capacity, whichever is less, within a period of five years is exempt from the requirement of obtaining a certificate of need if the nursing home is in compliance with all State regulations governing its operations. No licensed bed that is added by a nursing home in accordance with the requirements of this section, and no licensed bed that is part of an unimplemented certificate of need, may be sold or transferred to any other nursing home except upon application for and receipt of a certificate of need as provided by P.L.1971, c.136 (C.26:2H-1 et seq.). A nursing home that has removed beds from its license within the preceding five years shall not be eligible to increase its licensed bed capacity under the provisions of this section.

C.26:2H-7.25 Application prior to transferring ownership of a nursing home.

2. a. Prior to transferring ownership of a nursing home, the prospective new owner shall submit an application to the Department of Health that meets the requirements of section 3 of this act. The application shall include the following items:

- (1) the transfer of ownership fee established by the department;
- (2) a cover letter stating the applicant's intent to purchase the nursing home, and identification of the nursing home by name, address, county, and number and type of licensed beds;
- (3) a description of the proposed transaction, including:
 - (a) identification of the current owners of the nursing home;
 - (b) identification of 100 percent of the proposed new owners, including the names and addresses of all principals and interested parties; and
 - (c) if applicable, a copy of an organizational chart, including parent corporations and wholly-owned subsidiaries; and
- (4) a copy of the agreement of sale and, if applicable, a copy of any lease and management agreements.

The applicant may additionally submit a summary of the application materials that includes such details concerning the application as are required by the department, but that omits any proprietary information in the contracts for the sale or management of the nursing home, and any home addresses, social security numbers, or other personal information of any proposed owner, principal, or interested party. A summary prepared by the applicant may only be used for the purposes of posting information concerning the application on the department's Internet website pursuant to paragraph (1) of subsection d. of this section.

b. Information submitted pursuant to subsection a. of this section or subsection a. of section 3 of this act by an applicant for transfer of ownership of a nursing home shall not be used in any adverse licensure action or disciplinary action against the applicant.

- c. Approval of a transfer of ownership of a nursing home is contingent upon:

(1) a review of the applicant's history of disciplinary actions assessed in connection with any other facility owned, operated, or managed by the proposed owners and principals in New Jersey, and a determination based on that review that approval of the transfer of ownership will not present a material risk to the health, safety, or welfare of residents of the nursing home that is the subject of the transfer application; and

(2) payment of all outstanding and issued Medicaid audit claims and State penalties issued by the department against the current owner, unless such claims remain under appeal, in which case, if the claim remains under appeal, the applicant shall submit written verification that either the applicant or the current owners of the nursing home will assume responsibility for payment of such audit recoveries and State penalties at the conclusion of the appeal.

d. (1) A copy of each transfer of ownership application, or a summary of the application prepared by the applicant that includes the names of the proposed owners, principals, and interested parties, shall be published on the department's Internet website no later than 30 days after the date the department receives the application; provided that the department shall redact the materials to the extent necessary to ensure that no proprietary information in the contracts for the sale or management of the nursing home, and no home addresses, social security numbers, or other personal information of any proposed owner, principal, or interested party, is included in the materials published on the department's Internet website.

(2) Each application for the transfer of ownership of a nursing home shall be subject to a public comment period that shall commence not less than 30 days after the date the application is received by the department, and which comment period shall remain open for a period of not less than 30 days. The department shall establish a procedure for acknowledging receipt of public comments submitted. The text of comments submitted on a transfer of ownership application shall not be published on the department's Internet website, but shall be considered a government record pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et al.).

e. The Department shall complete review of any transfer of ownership application submitted pursuant to subsection a. of this section no later than 120 days after the date the application is received. If a transfer of ownership application has been reviewed and deemed acceptable, the department shall send an approval letter to the applicant.

f. Within five days after the transaction has been completed, the applicant shall submit to the department certification of closing from an attorney or a notarized letter from the applicant stating the date on which the transaction occurred, along with an executed bill of sale or assignment. To facilitate the timely transfer of Medicare and Medicaid provider numbers, the department shall issue the new license to the applicant no later than 30 days after the date the notice is received by the department.

g. No nursing home may delegate substantial management control of the nursing home's operations to a third party entity without providing prior written notice to the department. The notice provided by the owners of the facility to the department shall include:

(1) a copy of the management agreement;

(2) an organizational chart of the third party entity's proposed management team for the nursing home;

(3) the names and addresses of all owners, principals, and interested parties of the third party entity; and

(4) a list of any other licensed health care facilities owned, operated, or managed by the third party entity in any state or territory of the United States or in the District of Columbia for the preceding three years, along with owner-certified financial statements for each such facility for the last three years during which the facility was owned, operated, or managed by the third party

entity. If the third party entity owned, operated, or managed facilities located outside New Jersey in the preceding three years, the application shall include disclosures by the third party entity of any enforcement actions imposed during that period of time against any facility owned, operated, or managed by the third party entity in any jurisdiction.

h. (1) Upon request by the Commissioner of Health and subject to the provisions of P.L.1968, c.266 (C.52:9M-1 et seq.), the State Commission of Investigation shall undertake an investigation of one or more nursing homes in the State or the entities owning, operating, or managing one or more nursing homes in the State, provided that, if the commission determines that the request for an investigation from the Commissioner of Health exceeds the commission's capacity to perform such investigations, the commission may advise the Commissioner of Health as to any requests upon which it finds itself unable to proceed. The State Commission of Investigation may, at any time, submit to the Governor, the Commissioners of Health and Human Services, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, recommendations for administrative or legislative action to improve oversight and transparency in nursing homes.

(2) The State Auditor shall undertake a review of the oversight of nursing homes by the Department of Health and the Department of Human Services at least once every three years, with particular focus on compliance with federal inspection requirements, responses to complaints and response times in reviewing complaints, and actions taken to follow up on violations affecting the health, safety, or welfare of residents.

i. As used in sections 2 through 4 of this act:

“Interested party” means any individual or entity with an interest of one percent or more but less than five percent in an applicant to receive a transfer of ownership of a nursing home or the land or other real property on which a nursing home is located.

“Principal” means any individual or entity with an interest of five percent or more in an applicant to receive a transfer of ownership of a nursing home or the land or real property on which a nursing home is located.

C.26:2H-7.26 Requirements of transfer of ownership application.

3. a. A transfer of ownership application submitted to the Department of Health pursuant to subsection a. of section 2 of this act shall meet the following requirements:

(1) In the case of an application to transfer controlling interest in a nursing home to an individual or entity that has never previously owned or operated a licensed health care facility in New Jersey, or for any application to transfer controlling interest in a nursing home that is submitted within six months after a prior application for transfer of controlling interest in the nursing home was approved, the applicant shall:

(a) submit a projection of profits and losses for the next three years and a capital budget projection for the next three years;

(b) disclose any licensed health care facilities owned, operated, or managed by the proposed owners and principals in any state or territory of the United States or in the District of Columbia in the preceding three years, along with owner-certified financial statements for each such facility for the last three years during which the facility was owned, operated, or managed by the owner or principal and disclosures by the applicant as to any enforcement actions imposed during that period of time against any facility owned, operated, or managed by the applicant in any jurisdiction;

(c) hold a public hearing on the application no earlier than 30 days after the date the application is received by the department. Notice of the public hearing shall be published at least seven days in advance of the public hearing on the Internet websites of the department, the

nursing home, and the applicant, as well as in at least one newspaper published in each county, if any newspapers are published therein. The nursing home shall invite the Attorney General and the Commissioner of Health, or their designated representatives, to attend the hearing. The transfer of ownership application may not be approved until after the public hearing is completed; and

(d) consistent with the requirements of subsection b. of this section, submit to a criminal history record background check of each proposed owner and principal;

(2) In the case of an application to transfer controlling interest in a nursing home to an individual or entity that has previously owned or operated a licensed health care facility in New Jersey, the applicant shall:

(a) submit a projection of profits and losses for the next three years and a capital budget projection for the next three years; and

(b) disclose any licensed health care facilities owned, operated, or managed by the proposed owners and principals in any state or territory of the United States or in the District of Columbia in the preceding year, along with owner-certified financial statements for each facility owned, operated, or managed by the proposed owners and principals in New Jersey for the last year during which the facility was owned, operated, or managed by owner or principal;

(3) In the case of an application to transfer less than a controlling interest in a nursing home to an individual or entity that has never previously owned or operated a licensed health care facility in New Jersey, the applicant shall:

(a) disclose any licensed health care facilities owned, operated, or managed by the proposed owners and principals in any state or territory of the United States or in the District of Columbia in the preceding year and any enforcement actions imposed during the preceding year against any facility owned, operated, or managed by the applicant in any jurisdiction; and

(b) consistent with the requirements of subsection b. of this section, submit to a criminal history record background check of each proposed owner and principal; and

(4) In the case of an application to transfer less than a controlling interest in a nursing home to an individual or entity that has previously owned or operated a licensed health care facility in New Jersey, the applicant shall disclose any licensed health care facilities owned, operated, or managed by the proposed owners and principals in any state or territory of the United States or in the District of Columbia in the preceding year and any enforcement actions imposed during the preceding year against any facility owned, operated, or managed by the applicant in any jurisdiction.

b. (1) An applicant for a transfer of ownership of a nursing home who is required to complete a criminal history record background check pursuant to subsection a. of this section shall submit to being fingerprinted in accordance with applicable State and federal laws, rules, and regulations. An applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check.

(2) For the purposes of subsection a. of this section, the department is authorized to exchange fingerprint data with and receive criminal history record background information from the Division of State Police and the Federal Bureau of Investigation consistent with the provisions of applicable federal and State laws, rules, and regulations. Upon receipt of such notification, the department shall make a determination as to whether transferring all or part of the ownership of a nursing home to the applicant would constitute a material risk to the health, safety, or welfare of residents of the nursing home, which shall include determining whether any owner or principal has a prior conviction involving fraud or any other criminal offense of a financial nature, or a prior conviction that may bear on the health and safety of residents of a long-term care facility,

including, but not limited to, a prior conviction involving abuse, neglect, or exploitation of any person.

(3) The Division of State Police shall promptly notify the department in the event that an individual who was the subject of a criminal history record background check conducted pursuant to subsection a. of this section is convicted of a crime or offense in this State after the date the background check was performed. Upon receipt of that notification, the department shall make a determination regarding the continued eligibility for the individual to be an owner or principal of a nursing home.

C.26:2H-7.27 Notice to departments prior to selling, transferring ownership.

4. a. Prior to selling or transferring ownership of the land or other real property on which a nursing home is located, the prospective new owner shall submit notice to the Department of Health and the Department of Human Services, which notice shall include the following items:

(1) the sale or transfer of real property fee established by the Department of Health;

(2) a cover letter stating the applicant's intent to purchase the land or other real property on which a nursing home is located, and identification of the nursing home by name, address, and county;

(3) a description of the proposed transaction, including:

(a) identification of the current owners of the land or other real property on which a nursing home is located;

(b) identification of 100 percent of the proposed new owners, including the names and addresses of all principals and interested parties; and

(c) if applicable, a copy of an organizational chart, including parent corporations and wholly-owned subsidiaries;

(4) a copy of the agreement of sale or transfer, the proposed terms of the lease, rent, or use agreement with the nursing home and, if applicable, a copy of any management agreements; and

(5) an attestation by the new owners of the land or other real property that they will lease, rent, or authorize use of the land or other real property by the nursing home at a rate that is consistent with the fair market value for the lease, rent, or use of similar facilities in the same market area.

b. A summary of the notice submitted pursuant to subsection a. of this section, including the names of the prospective new owners, shall be made available on the Department of Health's Internet website.

c. Nursing homes shall report to the Department of Health their rates or average rates for the lease, rent, or use of land or other real property in a manner determined by the department. The department shall post the rates or average rates for the lease, rent, or use of land or other real property reported by nursing homes on its Internet website.

C.26:2H-42.1 Identification of nursing homes in financial distress, risk of bankruptcy.

5. The Department of Health shall as necessary, with assistance from the Department of Human Services, identify nursing homes that may be in acute financial distress or at risk of filing for bankruptcy protection by requiring each nursing home to report, within five business days, any default in the punctual payment when due of any: debt service payment where the debt is secured by real estate or assets of the nursing home; rent payment; payroll; or payroll tax obligation. The department may, as appropriate:

a. provide, at the nursing home's expense, or direct such nursing home to management support services and resources, as well as any other supports as may be necessary and appropriate to avoid bankruptcy proceedings or cessation of operations;

b. if the nursing homes does not take sufficient and timely action to avoid an impending bankruptcy or closure, and if the department finds the bankruptcy or closure would have a significant adverse effect on the health, safety, and welfare of the residents of the nursing home or would leave the area in which the nursing home is located lacking sufficient nursing home services after assessing the need for and availability of other nursing home services in the area, initiate proceedings in a court of competent jurisdiction for the appointment of a receiver for the nursing home, which receiver shall have the powers and authorities conferred by the order of receivership, which may include, but shall not be limited to, the authority to:

(1) hire any consultants or to undertake any studies of the nursing home the receiver deems appropriate;

(2) make any repairs or improvements as are necessary to ensure the safety of nursing home residents and staff;

(3) hire or discharge any employees, including the administrator or manager of the nursing home;

(4) receive or expend in a reasonable and prudent manner the revenues of the nursing home due on the date of the entry of the order of receivership and to become due under such order;

(5) continue the business of the nursing home and the care of the residents of the nursing home in all its aspects;

(6) do all acts necessary or appropriate to conserve the property and promote the health, safety, and welfare of the residents of the nursing home; and

(7) exercise such other powers as the receiver deems necessary or appropriate to implement the court order; and

c. Take such other steps and actions as may be available to ensure continuity of care for, and the safety of, residents of the nursing home.

6. This act shall take effect 180 days after the date of enactment.

Approved May 12, 2021.