

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2789

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JANUARY 29, 2021

SUMMARY

Synopsis:	Revises licensure, operational, and reporting requirements for nursing homes.
Type of Impact:	Increase in annual State expenditures and revenues.
Agencies Affected:	Department of Health; Department of Human Services; State Commission of Investigation; Office of the State Auditor

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that the Department of Health (DOH) will incur an indeterminate amount of annual costs under the bill due to increased oversight and enforcement activities related to the transfer of ownership of nursing home facilities and the sale or transfer of land or real property on which nursing home facilities are located. The department will also experience indeterminate annual cost increases to identify and provide assistance to nursing home facilities that may be in acute financial distress or at risk of filing for bankruptcy. Annual revenues generated from application fees imposed upon prospective new owners, as established by the department following the adoption of the bill, are indeterminate, and the OLS cannot ascertain the extent to which these fees will offset the costs of the bill.
- The OLS concludes that the Department of Human Services (DHS) will incur costs in hiring at least one full-time equivalent staff person to make certain determinations regarding the fair market value of land agreements, as required under the bill. As real estate market analysis is outside of the department’s purview, it is unlikely that existing department staff will have the qualifications to fulfill this provision.

- As the bill's provisions will result in an increased number of surveys conducted by the State Commission of Investigation (SCI) and an increased number of agency audits conducted by the Office of the State Auditor, the OLS estimates that these entities will expend additional State funds on salaries, benefits, and travel within the State.

BILL DESCRIPTION

This bill revises certain requirements concerning the licensure and operations of nursing homes. First, the bill revises a provision of current law that allows nursing homes to increase their total bed capacity by a limited amount without the need to obtain a certificate of need. The bill additionally prohibits the transfer of beds that are part of an unimplemented certificate of need to another nursing facility without an approved certificate of need.

Second, the bill requires that, prior to transferring ownership of a nursing home, the prospective new owner is to submit an application to the DOH, the requirements of which will vary depending on whether the applicant has ever owned or operated a nursing home in New Jersey and whether the application is for transfer of a controlling or non-controlling interest in the nursing home. Among other documentation, all applications are to include the transfer of ownership fee established by the DOH.

For applicants required to complete a criminal history record background check, the DOH will be required to 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. Approval of any application for transfer of ownership of a nursing home will be contingent upon a review of the applicant's history of disciplinary actions assessed by the DOH. The bill requires copies of the application to be posted on the DOH's website. All applications will be subject to public comment for a period of not less than 30 days. The DOH will be required to establish a process for acknowledging receipt of public comments.

The bill requires the DOH to review applications for transfers of ownership within 120 days. When a transfer of ownership application has been deemed acceptable, the DOH will send the applicant an approval letter. To facilitate the timely transfer of Medicare and Medicaid provider numbers, the DOH will be required to issue the new license to the applicant no later than 30 days after the date the notice of transaction is received by the DOH from the applicant. No nursing home will be authorized to delegate substantial management control of the facility to a third party entity without providing prior notice to the DOH.

Third, the bill establishes certain requirements for the sale or transfer of the land or other real property on which a nursing home is located. Prior to the sale or transfer of ownership, the prospective new owner will be required to submit an application to the DOH and the DHS that, among other things, includes the sale or transfer of real property fee established by the DOH.

The DHS will be required to utilize direct care ratio information reported by a nursing home, as required under existing law, to determine the average rates, as adjusted in each market area to account for applicable factors, for the lease, rent, or use of real property by a nursing home. The DHS will have the authority to: (1) establish rate caps charged to a nursing home for the use of real property; (2) determine whether a nursing home is paying a rate that significantly exceeds the fair market value; and (3) require that any rate that significantly exceeds the fair market value be reduced to match the average rate for similar facilities in the same market area.

Fourth, the bill requires nursing homes to report to the DOH when the nursing home misses a payment related to debt service, rent, payroll, or payroll taxes, which will serve as an indication that the nursing home may be in financial distress. The DOH will be required to develop strategies to assist facilities in financial distress to avoid bankruptcy or the need to close.

Finally, the bill provides that the DOH may request that the SCI, subject to the SCI's capacity to perform the requested investigation, or the State Auditor undertake an investigation of a nursing home or the entities owning, operating, or managing nursing homes. The bill further requires the State Auditor to undertake a review of the oversight of nursing homes by the DOH and the DHS at least once every three years.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the DOH will incur an indeterminate amount of annual costs under the bill due to increased oversight and enforcement activities related to the transfer of ownership of nursing home facilities and the sale or transfer of land or real property on which nursing home facilities are located. The department will also experience annual indeterminate cost increases to identify and provide assistance to nursing home facilities that may be in acute financial distress or at risk of filing for bankruptcy.

Currently, the department's Certificate of Need and Licensing unit enforces the State standards for licensure of health care facilities, and the Health Facility Survey and Field Operations unit enforces State licensing regulations. As such, to the extent that the provisions of the bill overlap with these units' current duties and the department can use existing resources within these units to fulfill the new requirements under the bill, costs will be minimized.

For example, this bill codifies existing regulations that require a prospective new owner to submit an application prior to transferring ownership of a nursing home. The OLS notes, however, that the bill, unlike the existing regulations, provides for varying application requirements under different scenarios. Generally, the components of the application under the bill are identical to the components under existing regulation, except that under the bill certain applicants are to include a three-year projection of profits and losses and a capital budget. As such, the OLS assumes the cost incurred by the department to process such applications will be minimal. However, there is no similar regulatory requirement regarding an application for the sale or transfer of land or real property on which nursing home facilities are located. Therefore, while the department may be able to use its current infrastructure to process these applications, costs may be incurred to hire additional staff to process the increased volume of applications.

Under the bill, the DOH is to establish application fees to be imposed on new owners, which will result in additional annual State revenues. However, the fee schedule is not known at this time so the amount of revenue to be raised is indeterminate, and the OLS cannot ascertain the extent to which the transfer of ownership fee and the sale or transfer of real property fee will offset the oversight and enforcement requirements of the bill. Currently, entities that apply for approval of ownership transfer pay a fee of \$2,500 plus \$15 per bed, while no fee is collected regarding the approval of the sale and transfer of real property.

The OLS also concludes that the DHS will incur costs in hiring staff to make certain determinations regarding the fair market value of land agreements, as required under the bill. Under the bill, the department is to adjust the value for local market factors and is authorized to establish a rate cap. As real estate market analysis is outside of the department's purview, it is

unlikely that existing department staff will have the qualifications to fulfill this provision. The OLS estimates that the department will need to hire, at a minimum, one full-time equivalent employee, resulting in a State cost of \$120,000 annually for salary, equipment, and fringe benefits, to fulfill this provision.

As the bill's provisions will result in an increased number of surveys conducted by the SCI and an increased number of agency audits conducted by the State Auditor, the OLS estimates that these entities will expend additional State funds on salaries, benefits, and travel within the State. The OLS cannot predict the magnitude of this increase, and therefore the cost of this provision, as certain surveys are to be conducted at the request of the DOH.

Section: Human Services
Analyst: Sarah Schmidt
Senior Research Analyst
Approved: Thomas Koenig
Assistant Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).