

SENATE, No. 2789

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JULY 30, 2020

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator LORETTA WEINBERG

District 37 (Bergen)

Co-Sponsored by:

Senator Pou

SYNOPSIS

Revises licensure, operational, and reporting requirements for long-term care facilities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/19/2020)

1 AN ACT concerning long-term care facilities, amending P.L.1987,
2 c.322, and supplementing Title 26 of the Revised Statutes.

3

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

6

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

9 1. Notwithstanding the provisions of section 7 of P.L.1971,
10 c.136 (C.26:2H-7) to the contrary, a nursing home which proposes
11 to increase the total number of licensed beds contained therein by
12 not more than 10 beds or 10% of its licensed bed capacity,
13 whichever is less, within a period of five years is exempt from the
14 requirement of obtaining a certificate of need if the nursing home is
15 in compliance with all State regulations governing its operations.
16 No transfer of a licensed bed that is added by a nursing home in
17 accordance with the requirements of this section to another nursing
18 home, and no transfer of a licensed bed that is part of an
19 unimplemented certificate of need to another nursing home, shall be
20 authorized except upon application for and receipt of a certificate of
21 need as provided by P.L.1971, c.136 (C.26:2H-1 et seq.).

22 (cf: P.L.1987, c.322, s.1)

23

24 2. (New section) a. The transfer of ownership of a long-term
25 care facility shall not require a certificate of need except when the
26 proposed owner does not satisfy the Department of Health's track
27 record review, including a review of the dashboard data for the
28 facility published pursuant to subsection f. of section 3 of P.L. ,
29 c. (C.) (pending before the Legislature as Senate Bill
30 No.2759 or Assembly Bill No.4478 of 2020/2021) for the preceding
31 three years, if available.

32 b. Prior to transferring ownership of a long-term care facility,
33 the prospective new owner shall submit an application to the Long
34 Term Care Licensing and Certification Program. The application
35 shall include the following items:

36 (1) the transfer of ownership fee established by the department;

37 (2) a cover letter stating the applicant's intent to purchase the
38 long-term care facility, and identification of the facility by name,
39 address, county, and number and type of licensed beds;

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

41 (a) identification of the current owners of the long-term care
42 facility;

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

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (c) if applicable, a copy of an organizational chart, including
- 2 parent corporations and wholly-owned subsidiaries;
- 3 (4) a copy of the agreement of sale and, if applicable, a copy of
- 4 any lease and management agreements;
- 5 (5) a projection of profits and losses for the next three years and
- 6 a capital budget projection for the next three years; and
- 7 (6) disclosure of any licensed health care facilities owned,
- 8 operated, or managed by the proposed owners and principals in any
- 9 state or territory of the United States or in the District of Columbia
- 10 in the preceding five years, along with audited financial statements
- 11 for each such facility for the last three years during which the
- 12 facility was owned, operated, or managed by the third party entity.
- 13 If the owners or principals own, operate, or manage facilities
- 14 located outside New Jersey, the application shall include letters
- 15 from the regulatory agency in each jurisdiction in which a facility is
- 16 owned, operated, or managed, verifying that the facility was
- 17 operated in substantial compliance with the laws of that jurisdiction
- 18 throughout the preceding five year period or for such time during
- 19 that period as the third party entity owned, operated, or managed
- 20 the facility, and that the facility has had no enforcement actions
- 21 imposed during that period of time.
- 22 c. Approval of a transfer of ownership of a long-term care
- 23 facility is contingent upon:
- 24 (1) a review of the applicant's track record by the department,
- 25 including a review of the dashboard data published pursuant to
- 26 subsection f. of section 3 of P.L. , c. (C.) (pending before
- 27 the Legislature as Senate Bill No.2759 or Assembly Bill No.4478 of
- 28 2020/2021) for any other facility owned, operated, or managed by
- 29 the proposed owners and principals in New Jersey, and a
- 30 determination based on that review that approval of the transfer of
- 31 ownership will not present a material risk to the health, safety, or
- 32 welfare of residents of the facility that is the subject of the transfer
- 33 application;
- 34 (2) payment of all outstanding Medicaid audit claims and State
- 35 penalties issued by the department against the current owner, or
- 36 written verification by the applicant that the applicant will assume
- 37 responsibility for payment of such audit findings and State
- 38 penalties; and
- 39 (3) a criminal history background check of each proposed owner
- 40 and principal and a determination that no proposed owner or
- 41 principal has a prior conviction involving fraud or any other
- 42 criminal offense of a financial nature, or a prior conviction that may
- 43 bear on the health and safety of residents of a long-term care
- 44 facility, including, but not limited to, a prior conviction involving
- 45 abuse, neglect, or exploitation of any person.
- 46 d. For the purposes of paragraph (3) of subsection c. of this
- 47 section, the department is authorized to exchange fingerprint data
- 48 with and receive criminal history record background information

1 from the Division of State Police and the Federal Bureau of
2 Investigation consistent with the provisions of applicable federal
3 and State laws, rules, and regulations. Upon receipt of such
4 notification, the department shall make a determination as to
5 whether transferring all or part of the ownership of a long-term care
6 facility to the applicant would constitute a material risk to the
7 health, safety, or welfare of residents of the facility. An applicant
8 for a transfer of ownership of a long-term care facility who is
9 required to complete a criminal history record background check
10 pursuant to this section shall submit to being fingerprinted in
11 accordance with applicable State and federal laws, rules, and
12 regulations. An applicant shall bear the cost for the criminal history
13 record background check, including all costs of administering and
14 processing the check.

15 e. Transfer of ownership application materials shall published
16 on the department's Internet website and shall be subject to public
17 comment for a period of not less than 30 days following submission
18 and publication of the application. The department may hold a
19 public hearing on the application upon request by the applicant, the
20 current owner, or at least 15 members of the public, in which case
21 the application may not be approved until after the public hearing is
22 completed.

23 f. The department shall not issue final approval for a transfer
24 of ownership of a long-term care facility under this section if the
25 department identifies any unresolved issues or questions concerning
26 any proposed owner or principal identified in the application. The
27 department may issue conditional approval of the transfer pending
28 final resolution of all unresolved issues and questions, subject to
29 appointment of a receiver or temporary manager of the facility at
30 the applicant's expense. The department may enter into a standing
31 contract with a third party entity to provide receivership or
32 temporary management services for the purposes of this subsection.
33 A receiver or temporary manager appointed pursuant to this
34 subsection shall have the authority to:

35 (1) make any repairs, improvements, or expenditures necessary
36 to preserve the health and safety of residents and staff at the facility
37 and to ameliorate any condition presenting a significant risk to the
38 health or safety of residents or staff of the facility, and to direct the
39 method or procedures by which this shall be accomplished;

40 (2) hire employees as needed to maintain mandatory staffing
41 levels;

42 (3) receive or expend in a reasonable and prudent manner the
43 revenues of the facility during the appointment period;

44 (4) continue the business of the facility and the care of the
45 residents of the facility in all aspects;

46 (5) perform all acts necessary or appropriate to conserve the
47 property and promote the health, safety, and welfare of the residents
48 of the facility; and

- 1 (6) exercise any other powers or authority conferred by the
2 department by regulation or in the appointment agreement.
- 3 g. When a transfer of ownership application has been reviewed
4 and deemed acceptable, an approval letter from the Long-Term
5 Care Licensing and Certification Program shall be sent to the
6 applicant along with licensure application forms.
- 7 h. Within five days after the transaction has been completed,
8 the applicant shall submit the following documents to the Long-
9 Term Care Licensing and Certification Program:
- 10 (1) completed licensure application forms;
11 (2) a notarized letter stating the date on which the transaction
12 occurred; and
13 (3) a copy of a certificate of continuing occupancy from the
14 local township, or a letter from the township verifying a policy of
15 not issuing any such document for changes of ownership.
- 16 i. The department shall provide for enhanced monitoring of
17 direct care loss ratios reported by a long-term care facility pursuant
18 to subsection c. of section 3 of P.L. , c. (C.) (pending
19 before the Legislature as Senate Bill No.2758 or Assembly Bill
20 No.4482 of 2020/2021) for three years following a transfer of
21 ownership of the long-term care facility.
- 22 j. For a period of six months following the date a transfer of
23 ownership of a long-term care facility is approved under this
24 section, no other transfer of ownership of that long-term care
25 facility shall be approved.
- 26 k. No long-term care facility may delegate management of the
27 facility to a third party entity without prior approval by the
28 department. The owners of the facility shall submit to the
29 department for approval:
- 30 (1) a copy of the management agreement;
31 (2) an organizational chart of the third party entity's proposed
32 management team for the facility;
33 (3) the names and addresses of all owners and principals of the
34 third party entity; and
35 (4) a list of any other licensed health care facilities owned,
36 operated, or managed by the third party entity in any state or
37 territory of the United States or in the District of Columbia for the
38 preceding five years, along with audited financial statements for
39 each such facility for the last three years during which the facility
40 was owned, operated, or managed by the third party entity. If the
41 third party entity owned, operated, or managed facilities located
42 outside New Jersey in the preceding five years, the application shall
43 include letters from the regulatory agency in each jurisdiction in
44 which the third party entity owned, operated, or managed facility in
45 the preceding five years verifying that the facility was operated in
46 substantial compliance with the laws of that jurisdiction throughout
47 the preceding five year period or for such time during that period as
48 the third party entity owned, operated, or managed the facility, and

1 that the facility has had no enforcement actions imposed during that
2 period of time.

3 1. (1) Upon request by the Commissioner of Health and
4 subject to the provisions of P.L.1968, c.266 (C.52:9M-1 et seq.), the
5 State Commission of Investigation shall undertake an investigation
6 of one or more long-term care facilities in the State or the entities
7 owning, operating, or managing one or long-term care facilities in
8 the State, provided that, if the commission determines that the
9 request for an investigation from Commissioner of Health exceeds
10 the commission's capacity to perform such investigations, the
11 commission may advise the Commissioner of Health as to any
12 requests upon which it finds itself unable to proceed. The State
13 Commission of Investigation may, at any time, submit to the
14 Governor, the Commissioners of Health and Human Services, and,
15 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the
16 Legislature, recommendations for administrative or legislative
17 action to improve oversight and transparency in long-term care
18 facilities.

19 (2) Upon approval by the Senate President and the Speaker of
20 the General Assembly, the State Auditor shall undertake an
21 investigation of one or more long-term care facilities in the State or
22 the entities owning, operating, or managing one or long-term care
23 facilities in the State.

24 (3) The State Auditor shall undertake a review of the oversight
25 of long-term care facilities by the Department of Health and the
26 Department of Human Services at least once every three years, with
27 particular focus on compliance with federal inspection
28 requirements, responses to complaints and response times in
29 reviewing complaints, and actions taken to follow up on violations
30 affecting the health, safety, or welfare of residents.

31 m. As used in this section and in section 3 of this act,
32 "principal" means any individual or entity with an interest of five
33 percent or more in an applicant to receive a transfer of ownership of
34 a long-term care facility.

35
36 3. (New section) a. The sale or transfer of the land or other
37 real property on which a long-term care facility is located shall not
38 require a certificate of need except when the proposed owner does
39 not satisfy the Department of Health's track record review,
40 including a review of the dashboard data published pursuant to
41 subsection f. of section 3 of P.L. , c. (C.) (pending before
42 the Legislature as Senate Bill No.2759 or Assembly Bill No.4478 of
43 2020/2021) for the facility for the preceding three years, if
44 available.

45 b. Prior to selling or transferring ownership of the land or other
46 real property on which a long-term care facility is located, the
47 prospective new owner shall submit an application to the Long

1 Term Care Licensing and Certification Program. The application
2 shall include the following items:

3 (1) the sale or transfer of real property fee established by the
4 department;

5 (2) a cover letter stating the applicant's intent to purchase the
6 land or other real property on which a long-term care facility is
7 located, and identification of the facility by name, address, and
8 county;

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

10 (a) identification of the current owners of the land or other real
11 property on which a long-term care facility is located;

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

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

16 (4) a copy of the agreement of sale or transfer, the proposed
17 terms of the lease, rent, or use agreement with the long-term care
18 facility and, if applicable, a copy of any management agreements;
19 and

20 (5) an attestation that the new owners will lease, rent, or
21 authorize use of the land or other real property by the long-term
22 care facility at a rate that is no more than twice the prevailing fair
23 market rate for the lease, rent, or use of real property by a long-term
24 care facility, as compared with comparable uses in comparable
25 locations and settings at the time the lease, rental, or use agreement
26 is executed.

27 c. Sale and transfer of ownership application materials for the
28 land or real property on which a long-term care facility is located
29 shall be made available on the department's Internet website and
30 shall be subject to public comment for a period of not less than 30
31 days following submission and publication of the application. The
32 department may hold a public hearing on the application upon
33 request by the applicant, the current owner, or at least 15 members
34 of the public, in which case the application may not be approved
35 until after the public hearing is completed.

36 d. The department shall not issue final approval for a sale or
37 transfer of ownership of the land or other real property on which a
38 long-term care facility is located under this section if the
39 department identifies any unresolved issues or questions concerning
40 any proposed owner or principal identified in the application.

41 e. (1) The owner of land or real property on which a long-term
42 care facility is located shall submit to the department a copy of any
43 lease, rent, or use agreement executed by the owner of the land or
44 real property and the long-term care facility on or after the effective
45 date of this act, which agreement shall be submitted to the
46 department no later than 30 days after the date the agreement is
47 executed. The department shall review the terms of the agreement
48 and determine whether the amount charged for the lease, rent, or

1 use of the land or real property exceeds more than twice the fair
2 market value for the lease, rent, or use of land or real property by a
3 long-term care facility, based on an assessment of comparable uses
4 in comparable locations and settings.

5 (2) If the department determines that the terms of the lease, rent,
6 or use agreement for land or real property by a long-term care
7 facility exceed twice the prevailing fair market rate for the lease,
8 rent, or use of real property by a long-term care facility, the
9 department may:

10 (a) require the owner of the land or real property to reimburse
11 the long-term care facility the balance of any payments made for the
12 lease, rent, or use of the land or real property under the current
13 agreement that were in excess of twice the prevailing fair market
14 value for the lease, rent, or use of the real property by the long-term
15 care facility; and

16 (b) require the parties to the agreement to execute a revised
17 agreement under lease, rent, or use terms that do not exceed twice
18 the fair market rate for the lease, rent, or use of land or real property
19 by a long-term care facility.

20 (3) The owner of land or real property on which a long-term
21 care facility is located may request review of the department's
22 determination of the prevailing fair market value of the lease, rent,
23 or use of land or real property by a long-term care facility, which
24 review shall be conducted by the Commissioner of Health. The
25 commissioner's determination upon review shall constitute a final
26 agency decision subject to review by the Appellate Division of the
27 Superior Court.

28

29 4. (New section) The Department of Health shall use the
30 information reported by long-term care facilities pursuant to P.L. ,
31 c. (C.) (pending before the Legislature as Senate Bill
32 No.2759 or Assembly Bill No.4478 of 2020/2021) to identify
33 facilities that may be in acute financial distress or at risk of filing
34 for bankruptcy protection, and develop strategies to assist those
35 facilities in avoiding bankruptcy or the need to close. The
36 department may, as appropriate:

37 a. Provide management support services and resources, as well
38 as any other supports as may be necessary and appropriate to avoid
39 bankruptcy proceedings or cessation of operations;

40 b. Initiate proceedings in a court of competent jurisdiction for
41 the appointment of a receiver for the long-term care facility, which
42 receiver shall have the powers and authorities conferred by the
43 order of receivership, which may include, but shall not be limited
44 to, the authority to:

45 (1) hire any consultants or to undertake any studies of the
46 facility the receiver deems appropriate;

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

- 1 (3) hire or discharge any employees, including the administrator
2 or manager of the facility;
- 3 (4) receive or expend in a reasonable and prudent manner the
4 revenues of the facility due on the date of the entry of the order of
5 receivership and to become due under such order;
- 6 (5) continue the business of the facility and the care of the
7 residents of the facility in all its aspects;
- 8 (6) do all acts necessary or appropriate to conserve the property
9 and promote the health, safety, and welfare of the residents of the
10 facility; and
- 11 (7) exercise such other powers as the receiver deems necessary
12 or appropriate to implement the court order; and
- 13 c. Take such other steps and actions as may be available to
14 ensure continuity of care for, and the safety of, residents of the
15 facility.

16
17 5. This act shall take effect 60 days after the date of enactment.
18
19

20 STATEMENT
21

22 This bill revises certain requirements concerning the licensure
23 and operations of long-term care facilities.

24 Specifically, the bill revises a provision of current law that
25 allows nursing homes to increase their total bed capacity by a
26 limited amount without the need to obtain a certificate of need, to
27 provide that beds added in this manner may not be transferred to
28 another nursing home without obtaining a certificate of need. The
29 bill additionally prohibits the transfer of beds that are part of an
30 unimplemented certificate of need to another nursing facility
31 without obtaining a certificate of need.

32 With regard to transfers of ownership of long-term care facilities,
33 the bill codifies an existing regulation providing that ownership
34 transfers do not require a certificate of need except when the
35 proposed owner does not satisfy the Department of Health's (DOH)
36 track record review. The bill revises this requirement to provide
37 that the track review will include a review of the dashboard data for
38 the facility for the preceding three years, if available, which
39 dashboard is to be created under another bill pending in the current
40 session, Senate Bill No.2759 and Assembly Bill No.4478.

41 Prior to transferring ownership of a long-term care facility, the
42 prospective new owner will be required to submit an application to
43 the Long Term Care Licensing and Certification Program in the
44 DOH. The application is to specifically include: (1) the transfer of
45 ownership fee established by the DOH; (2) a cover letter stating the
46 applicant's intent to purchase the long-term care facility, and
47 identification of the facility by name, address, county, and number
48 and type of licensed beds; (3) a description of the parties to the

1 proposed transaction, including the current owners of the long-term
2 care facility, the proposed new owners, including the names and
3 addresses of all principals, and if applicable, a copy of an
4 organizational chart, including parent corporations and wholly-
5 owned subsidiaries; (4) a copy of the agreement of sale and, if
6 applicable, a copy of any lease and management agreements; (5) a
7 projection of profits and losses for the next three years and a capital
8 budget projection for the next three years; and (6) disclosure of any
9 licensed health care facilities owned, operated, or managed by the
10 proposed owners and principals in the preceding five years,
11 including verification that any out-of-State facilities were in
12 compliance with the laws of the out-of-State jurisdiction during that
13 period and had no enforcement actions imposed during the past 12
14 months. The applicant will also be required to provide audited
15 financial statements for each facility for the last three years during
16 that period in which the applicant owned, operated, or managed the
17 facility. "Principal" is defined in the bill to mean any individual or
18 entity with an interest of five percent or more in an applicant to
19 receive a transfer of ownership of a long-term care facility.

20 Approval of a transfer of ownership of a long-term care facility
21 will be contingent upon a review of the applicant's track record by
22 the DOH, including a review of the dashboard data for any other
23 facility owned, operated, or managed by the proposed owners and
24 principals in New Jersey, payment or assumption of responsibility
25 of all outstanding Medicaid audit claims and State penalties issued
26 by the DOH against the current owner, and a criminal history
27 background check of each proposed owner and principal and a
28 determination that no proposed owner or principal has a prior
29 conviction involving fraud or other criminal offenses of a financial
30 nature, or a prior conviction that may bear on the health, safety, or
31 welfare of residents of a long-term care facility, including, but not
32 limited to, a prior conviction involving abuse, neglect, or
33 exploitation of any person.

34 Transfer of ownership application materials will be made
35 available on the DOH's Internet website and will be subject to
36 public comment for a period of not less than 30 days following
37 submission and publication of the application. The DOH may hold
38 a public hearing on the application upon request by the applicant,
39 the current owner, or at least 15 members of the public, in which
40 case the application may not be approved until after the public
41 hearing is completed.

42 The DOH may not issue final approval for a transfer of
43 ownership of a long-term care facility if the DOH identifies any
44 unresolved issues or questions concerning any proposed owner or
45 principal identified in the application. The DOH will be authorized
46 to issue conditional approval of the transfer pending final resolution
47 of all unresolved issues and questions, subject to appointment of a
48 receiver or temporary manager of the facility at the applicant's

1 expense. The DOH will be authorized to enter into a standing
2 contract with a third party entity to provide receivership or
3 temporary management services. A receiver or temporary manager
4 will have the authority to: (1) make any necessary repairs,
5 improvements, or expenditures necessary to preserve the health and
6 safety of residents and staff at the facility; (2) hire employees as
7 needed to maintain mandatory staffing levels; (3) receive or expend
8 in a reasonable and prudent manner the revenues of the facility
9 during the appointment period; (4) continue the business of the
10 facility and the care of the residents of the facility in all aspects; (5)
11 perform all acts necessary or appropriate to conserve the property
12 and promote the health, safety, and welfare of the residents of the
13 facility; and (6) exercise any other powers or authority conferred by
14 the DOH by regulation or in the appointment agreement.

15 When a transfer of ownership application has been reviewed and
16 deemed acceptable, an approval letter from the Long-Term Care
17 Licensing and Certification Program will be sent to the applicant
18 along with licensure application forms. Within five days after the
19 transaction has been completed, the applicant will be required to
20 submit to the Long-Term Care Licensing and Certification Program
21 completed licensure application forms, a notarized letter stating the
22 date on which the transaction occurred, and a copy of a certificate
23 of continuing occupancy from the local township, or a letter from
24 the township verifying a policy of not issuing any such document
25 for changes of ownership.

26 The DOH is to provide for enhanced monitoring of direct care
27 loss ratios reported by a long-term care facility pursuant to another
28 bill pending in the current session, Assembly Bill No.4482 and
29 Senate Bill No.2758, for three years following a transfer of
30 ownership of the long-term care facility. For a period of six months
31 following a transfer of ownership of a long-term care facility, no
32 other transfer of ownership of that long-term care facility may be
33 approved.

34 No long-term care facility will be authorized to delegate
35 management of the facility to a third party entity without prior
36 approval by the DOH. The owners of the facility will be required
37 submit to the DOH for approval: a copy of the management
38 agreement; an organizational chart of the third party entity's
39 proposed management team for the facility; the names and
40 addresses of all owners and principals of the third party entity; and
41 a list of any other licensed health care facilities owned, operated, or
42 managed by the third party entity for the preceding five years, along
43 with verification that any out-of-State facilities were operated in
44 substantial compliance with the laws of that jurisdiction and had no
45 enforcement actions imposed throughout the preceding five year
46 period or for such time during that period as the third party entity
47 owned, operated, or managed the facility. The third party entity
48 will also be required to submit audited financial statements for the

1 last three years during that period during which the third party
2 entity owned, managed, or operated the other facility.

3 The bill provides that the DOH may request that the State
4 Commission of Investigation (SCI) or the State Auditor undertake
5 an investigation of one or more long-term care facilities in the State
6 or the entities owning, operating, or managing the facilities. A
7 request for the State Auditor to undertake an investigation will
8 require approval by the Senate President and the Speaker of the
9 General Assembly. A request for the SCI to investigate one or
10 more facilities will be subject to the SCI's capacity to perform the
11 requested investigation. The SCI will also be allowed, at any time,
12 to submit to the Governor, the Commissioners of Health and Human
13 Services, and the Legislature, recommendations for administrative
14 or legislative action to improve oversight and transparency in long-
15 term care facilities.

16 The bill further requires the State Auditor to undertake a review
17 of the oversight of long-term care facilities by the DOH and the
18 Department of Human Services at least once every three years, with
19 particular focus on compliance with federal inspection
20 requirements, responses to complaints and response times in
21 reviewing complaints, and actions taken to follow up on violations
22 affecting the health, safety, or welfare of residents.

23 The bill additionally establishes certain requirements for the sale
24 or transfer of the land or other real property on which a long-term
25 care facility is located. The bill provides that a certificate of need
26 will not be required unless the proposed owner does not satisfy the
27 DOH's track record review, including a review of the dashboard
28 data for the facility for the preceding three years, if available. Prior
29 to selling or transferring ownership of the land or other real
30 property on which a long-term care facility is located, the
31 prospective new owner will be required to submit an application to
32 the Long Term Care Licensing and Certification Program that
33 includes: (1) the sale or transfer of real property fee established by
34 the department; (2) a cover letter stating the applicant's intent to
35 purchase the land or other real property and identification of the
36 facility; (3) a description of the parties to the proposed transaction,
37 including the current owners, the proposed new owners, including
38 the names and addresses of all principals, and if applicable, a copy
39 of an organizational chart, including parent corporations and
40 wholly-owned subsidiaries; (4) a copy of the agreement of sale or
41 transfer, the proposed terms of the lease, rent, or use agreement
42 with the long-term care facility and, if applicable, a copy of any
43 management agreements; and (5) an attestation that the new owners
44 will lease, rent, or authorize use of the land or other real property by
45 the long-term care facility at a rate that is no more than twice the
46 prevailing fair market rate for the lease, rent, or use of real property
47 by a long-term care facility, as compared with comparable uses in

1 comparable locations and settings at the time the lease, rental, or
2 use agreement is executed.

3 Applications for the sale or transfer of land or real property on
4 which a long-term care facility is located will be made available on
5 the DOH's Internet website and will be subject to public comment
6 for a period of at least 30 days. The DOH will be authorized to
7 hold a public hearing on the application upon request by the
8 applicant, the current owner, or at least 15 members of the public,
9 in which case the application may not be approved until after the
10 public hearing is completed.

11 The DOH may not issue final approval for sale or transfer of
12 ownership of the land or other real property on which a long-term
13 care facility is located if the DOH identifies any unresolved issues
14 or questions concerning any proposed owner or principal.

15 The owner of land or real property on which a long-term care
16 facility is located will be required to submit to the DOH a copy of
17 any lease, rent, or use agreement executed by the owner and the
18 long-term care facility within 30 days after the date the agreement
19 is executed. The DOH will review the terms of the agreement and
20 determine whether the amount charged for the lease, rent, or use of
21 the land or real property exceeds more than twice the fair market
22 value for the lease, rent, or use of land or real property by a long-
23 term care facility, based on an assessment of comparable uses in
24 comparable locations and settings. If the DOH determines that the
25 terms of the agreement exceed twice the prevailing fair market rate
26 for the lease, rent, or use of real property by a long-term care
27 facility, the DOH may require the owner to reimburse the long-term
28 care facility for the balance of any payments made that were in
29 excess of twice the prevailing fair market value for comparable
30 agreements, and require the parties to execute a revised agreement
31 under terms that do not exceed twice the fair market rate for the
32 lease, rent, or use of land or real property by a long-term care
33 facility. Owners of land or real property on which a long-term care
34 facility is located may request that the Commissioner of Health
35 review the DOH's determination of the prevailing fair market value.
36 The commissioner's determination upon review will constitute a
37 final agency decision subject to review by the Appellate Division of
38 the Superior Court.

39 The bill additionally requires the DOH to use certain information
40 reported by long-term care facilities to identify facilities that may
41 be in acute financial distress or at risk of filing for bankruptcy
42 protection, and develop strategies to assist those facilities in
43 avoiding bankruptcy or the need to close. Specifically, the DOH
44 will be authorized to provide management services and resources
45 and other supports as are necessary; initiate court proceedings for
46 the appointment of a receiver; take other steps to ensure the
47 continuity of care for, and the safety of, residents of the facility.

1 A receiver appointed under the bill will have the authority to:
2 hire consultants to undertake a study of the facility; make any
3 repairs or improvements as are necessary to ensure the safety of
4 facility residents and staff; hire or discharge any employees
5 including the administrator or manager of the facility; receive or
6 expend in a reasonable and prudent manner the revenues of the
7 facility due on the date of the entry of the order of receivership and
8 to become due under such order; continue the business of the
9 facility and the care of the residents of the facility in all its aspects;
10 do all acts necessary or appropriate to conserve the property and
11 promote the health, safety, and welfare of the residents of the
12 facility; and exercise any other powers as the receiver deems
13 necessary or appropriate to implement the court order establishing
14 the receivership.