

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 2789

STATE OF NEW JERSEY

DATED: OCTOBER 8, 2020

The Senate Health, Human Services and Senior Citizens Committee reports favorably Senate Bill No. 2789.

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

Specifically, 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, to provide that beds added in this manner may not be transferred to another nursing home without obtaining 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 obtaining a certificate of need.

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

Prior to transferring ownership of a long-term care facility, the prospective new owner will be required to submit an application to the Long Term Care Licensing and Certification Program in the DOH. The application is to specifically include: (1) the transfer of ownership fee established by the DOH; (2) a cover letter stating the applicant's intent to purchase the long-term care facility, and identification of the facility by name, address, county, and number and type of licensed beds; (3) a description of the parties to the proposed transaction, including the current owners of the long-term care facility, the proposed new owners, including the names and addresses of all principals, and, if applicable, a copy of an organizational chart, including parent corporations and wholly-owned subsidiaries; (4) a copy of the agreement of sale and, if applicable, a copy of any lease and management agreements; (5) a projection of profits and losses for the next three years and a capital budget projection for the next three years; and (6) disclosure of any licensed health care facilities owned,

operated, or managed by the proposed owners and principals in the preceding five years, including verification that any out-of-State facilities were in compliance with the laws of the out-of-State jurisdiction during that period and had no enforcement actions imposed during the past 12 months. The applicant will also be required to provide audited financial statements for each facility for the last three years during that period in which the applicant owned, operated, or managed the facility. “Principal” is defined in the bill to mean any individual or entity with an interest of five percent or more in an applicant to receive a transfer of ownership of a long-term care facility.

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

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

The DOH may not issue final approval for a transfer of ownership of a long-term care facility if the DOH identifies any unresolved issues or questions concerning any proposed owner or principal identified in the application. The DOH will be authorized to issue conditional approval of the transfer pending final resolution of all unresolved issues and questions, subject to appointment of a receiver or temporary manager of the facility at the applicant's expense. The DOH will be authorized to enter into a standing contract with a third party entity to provide receivership or temporary management services. A receiver or temporary manager will have the authority to: (1) make any necessary repairs, improvements, or expenditures necessary to preserve the health and safety of residents and staff at the facility; (2) hire employees as needed to maintain mandatory staffing levels; (3) receive or expend in a reasonable and prudent manner the revenues of the facility during the appointment period; (4) continue the business of the facility and the care of the residents of the facility in all aspects; (5)

perform all acts necessary or appropriate to conserve the property and promote the health, safety, and welfare of the residents of the facility; and (6) exercise any other powers or authority conferred by the DOH by regulation or in the appointment agreement.

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

The DOH is to provide for enhanced monitoring of direct care ratios reported by a long-term care facility pursuant to section 3 of P.L.2020, c.89 (C.30:4D-7cc) for three years following a transfer of ownership of the long-term care facility. For a period of six months following a transfer of ownership of a long-term care facility, no other transfer of ownership of that long-term care facility may be approved.

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

The bill provides that the DOH may request that the State Commission of Investigation (SCI) or the State Auditor undertake an investigation of one or more long-term care facilities in the State or the entities owning, operating, or managing the facilities. A request for the State Auditor to undertake an investigation will require approval by the Senate President and the Speaker of the General Assembly. A request for the SCI to investigate one or more facilities will be subject to the SCI's capacity to perform the requested investigation. The SCI will also be allowed, at any time, to submit to the Governor, the

Commissioners of Health and Human Services, and the Legislature, recommendations for administrative or legislative action to improve oversight and transparency in long-term care facilities.

The bill further requires the State Auditor to undertake a review of the oversight of long-term care facilities by the DOH 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.

The bill additionally establishes certain requirements for the sale or transfer of the land or other real property on which a long-term care facility is located. The bill provides that a certificate of need will not be required unless the proposed owner does not satisfy the DOH's track record review, including a review of the dashboard data for the facility for the preceding three years, if available. Prior to selling or transferring ownership of the land or other real property on which a long-term care facility is located, the prospective new owner will be required to submit an application to the Long Term Care Licensing and Certification Program that includes: (1) the sale or transfer of real property fee established by the department; (2) a cover letter stating the applicant's intent to purchase the land or other real property and identification of the facility; (3) a description of the parties to the proposed transaction, including the current owners, the proposed new owners, including the names and addresses of all principals, and 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 long-term care facility and, if applicable, a copy of any management agreements; and (5) an attestation that the new owners will lease, rent, or authorize use of the land or other real property by the long-term care facility at a rate that is no more than twice the prevailing fair market rate for the lease, rent, or use of real property by a long-term care facility, as compared with comparable uses in comparable locations and settings at the time the lease, rental, or use agreement is executed.

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

The DOH may not issue final approval for sale or transfer of ownership of the land or other real property on which a long-term care

facility is located if the DOH identifies any unresolved issues or questions concerning any proposed owner or principal.

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

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

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