SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2789

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 21, 2021

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2789, with committee amendments.

As amended by the committee, this bill revises certain requirements concerning the licensure and operations of nursing homes.

Specifically, the bill as amended 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 except with an approved certificate of need, and a nursing home that has removed beds from its license within the preceding five years will not be eligible to add beds in this manner. 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.

As amended, the bill requires that, prior to transferring ownership of a nursing home, the prospective new owner will be required to submit an application to the Department of Health (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. All applications are to include: (1) the transfer of ownership fee established by the DOH; (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 parties to the proposed transaction, including the current owners of the nursing home, the proposed new owners, including the names and addresses of all principals and interested parties, and 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.

For transfers of ownership of a controlling interest in a nursing home to a person or entity that has never owned or operated a nursing home in New Jersey, and for transfers of a controlling interest in a nursing home that are submitted within six months after a prior

transfer of a controlling interest in the nursing home was approved, the applicant is additionally required to: submit a projection of profits and losses for the next three years and a capital budget projection for the next three years; disclose any licensed health care facilities owned, operated, or managed by the proposed owners and principals in the preceding three years; disclose any enforcement actions imposed during the past three years against any facility owned, operated, or managed by the applicant in any jurisdiction; provide owner-certified financial statements for each facility for the last three years during that period in which the applicant owned, operated, or managed the facility; hold a public hearing on the application; and complete a criminal history record background check of all owners and principals.

"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 nursing home. "Interested party" is defined in the bill to mean 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.

For transfers of ownership of a controlling interest in a nursing home to an applicant that has owned or operated a nursing home in New Jersey, the application is to include a projection of profits and losses for the next three years and a capital budget projection for the next three years; and disclosure of 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.

For transfers of ownership of a non-controlling interest in a nursing home to an applicant that has never owned or operated a nursing home in New Jersey, the applicant will be required to 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 submit to a criminal history record background check of each proposed owner and principal.

For transfers of ownership of a non-controlling interest in a nursing home to an applicant that has owned or operated a licensed health care facility in New Jersey, the applicant will be required to 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.

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, which will 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.

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 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 and issued Medicaid audit claims and State penalties issued by the DOH against the current owner, unless the claims remain under appeal, in which case the applicant will be required to submit written verification that either the applicant or the current owners of the nursing home will assume responsibility for payment of any audit recoveries and State penalties at the conclusion of the appeal.

The bill, as amended, requires copies of the application, with certain proprietary and personal identifying information redacted, to be posted on the DOH's Internet website. All applicants will have the option to prepare a summary of the application materials that can be published on the DOH's website in lieu of the application itself. The bill, as amended, provides that application materials may not be used in any adverse administrative or disciplinary action against an applicant.

All applications will be subject to public comment for a period of not less than 30 days, which comment period is to be opened within 30 days after the date the application is submitted to the DOH. The DOH will be required to establish a process for acknowledging receipt of public comments.

The bill as amended requires DOH to complete review of applications for transfers of ownership within 120 days. When a transfer of ownership application has been reviewed and deemed acceptable, the DOH will send the applicant an approval letter. Within five days after the transaction has been completed, the applicant will be required to submit to the DOH 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 DOH will be required to issue the new

license to the applicant no later than 30 days after the date the notice is received by the DOH.

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. The owners of the facility will be required to submit with the notice: a copy of the management agreement; an organizational chart of the third party entity's proposed management team for the nursing home; the names and addresses of all owners, principals, and interested parties 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 three years, along with disclosure of any enforcement actions imposed during that period against any facility owned, operated, or managed by the applicant during that period. The third party entity will also be required to submit owner-certified financial statements for the last three years during that period 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 nursing homes in the State or the entities owning, operating, or managing the nursing homes. 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 nursing homes 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 nursing homes.

The bill further requires the State Auditor to undertake a review of the oversight of nursing homes 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, as amended, additionally establishes certain requirements for the sale or transfer of the land or other real property on which a nursing home is located. Prior to selling or transferring ownership of the land or other real property on which a nursing home is located, the prospective new owner will be required to submit an application to the DOH and the Department of Human Services (DHS) 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 nursing home; (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 interested parties, 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 nursing home 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 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. A summary of the notice will be posted on the DOH's website.

The DHS will be required to utilize the direct care ratios reported pursuant to subsection c. of section 3 of P.L.2020, c.89 (C.30:4D-7cc) to determine the average rates for the lease, rent, or use of land or other real property by nursing homes in the State, which average rates are to be adjusted in each market area to account for factors that affect the average lease, rent, or use rates in that market area. The DHS will have the authority to: (1) establish caps on the maximum lease, rent, or use rates that can be charged to a nursing home for the use of real property; (2) determine whether a nursing home is paying a lease, rent, or use rate for land or other real property that significantly exceeds the fair market value for similar facilities in the same market area; and (3) require that any rate that significantly exceeds the fair market value for the lease, rent, or use of similar facilities in that market area be reduced, for the duration of the current lease, rent, or use agreement, to match the average lease, rent, or use rate for similar facilities in the same market area.

As amended, 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. 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; and take other steps to ensure the continuity of care for, and the safety of, residents of the nursing home.

A receiver appointed under the bill will have the authority to: hire consultants to undertake a study of the nursing home; make any repairs or improvements as are necessary to ensure the safety of nursing home residents and staff; hire or discharge any employees including the administrator or manager of the nursing home; 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; continue the business of the nursing home and the care of the residents of the nursing home 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 nursing home; and

exercise any other powers as the receiver deems necessary or appropriate to implement the court order establishing the receivership.

COMMITTEE AMENDMENTS:

The committee amendments revise the scope of the bill to make it applicable to nursing homes only, rather than all long-term care facilities. The amendments update the title and synopsis of the bill to reflect this change.

The committee amendments revise the new restrictions on transferring beds added under an existing exception to the certificate of need requirement to provide that beds added under that provision, as well as beds that are part of an unimplemented certificate of need, may not be transferred to any other nursing home except with an approved certificate of need. The amendments further provide that a nursing home that has removed beds from its license within the preceding five years will not be eligible for the certificate of need exception.

The committee amendments remove language referring to the DOH's track record review of applicants for transfer ownership of a nursing home and for transfer of the land or other real property on which a nursing home is located, as well as references to the Long Term Care Licensing and Certification Program, which language would have codified an outdated regulation and referred to a program that does not currently exist. In lieu of track record review, the DOH will review the applicant's history of disciplinary actions assessed in connection with other facilities the applicant owns, operates, or manages in the State.

The committee amendments revise the requirements to apply for transfers of ownership of a nursing home to replace a standard that applied to all transfers of ownership, to create four levels of review based on whether the applicant has ever owned or operated a licensed health care facility in New Jersey and whether the transfer would pertain to a controlling or a non-controlling interest in the nursing home. The amendments provide that only certain applicants will be subject to a criminal history record background check and required to hold a public hearing on the application. The amendments further revise the look-back period concerning other health care facilities owned or operated by the applicant.

The committee amendments require the application materials for all applicants to include the names and addresses of all principals and interested parties in the nursing home. The bill revises the definition of "principal" to mean anyone with more than a five percent interest in an applicant for transfer of a nursing home, and add a new definition of "interested party" to mean an entity with an interest in the applicant of one percent or more but less than five percent.

The committee amendments revise the requirement for the DOH to hold a public hearing on all applications for transfer of ownership of a nursing home, to instead provide that, for applicants that are subject to

the highest level of review, the nursing home that is the subject of the transfer of ownership application will be required to hold the public hearing no earlier than 30 days after the date the application is received by the DOH, and invite the Attorney General and the Commissioner of Health, or their representatives, to attend the hearing. The application may not be approved until after the public hearing is completed. A public hearing is only required for applicants seeking to acquire a controlling interest in a nursing home that have never owned or operated a health care facility in New Jersey, as well as to applicants for transfer of a controlling interest within six months after a previous transfer of a controlling interest was approved; a public hearing is not required for other types of applicant.

The committee amendments revise a requirement for all applicants for transfers of ownership of a nursing home to obtain letters from other jurisdictions in which they own, operate, or manage a long-term care facility verifying that the facility was operated in compliance with the laws of that other jurisdiction, to instead require applicants who have never owned or operated a licensed health care facility in New Jersey to disclose any enforcement actions taken against a facility owned, operated, or managed in another jurisdiction. The amendments revise the look-back periods concerning facilities owned, operated, or managed by the applicant, which will vary depending on the level of review applicable to the application.

The committee amendments add language providing that application materials for the transfer of ownership of a nursing home may not be used in administrative actions against the applicant.

The committee amendments revise the criminal history record background check requirements to include language requiring the Division of State Police to provide the DOH with notice in the event that an individual who completed a criminal history record background check is subsequently convicted of a crime or offense in the State.

The committee amendments revise the requirements for transfer of ownership of a nursing home to require that the DOH redact certain personal and proprietary information from the application before posting it on the DOH's Internet website. Alternatively, applicants will have the option to prepare a summary of the application that will be posted on the DOH's Internet website.

The committee amendments remove provisions concerning the specific authorities that would be granted to a receiver or temporary manager of a nursing home during a period of conditional approval.

The committee amendments remove a requirement for an approved applicant to submit to the DOH completed licensure application forms and certificates of continuing occupancy, and to instead require the applicant to submit certain documents certifying the date of the transaction along with an executed bill of sale or assignment. The amendments require the DOH to issue the new license to the applicant no later than 30 days after the date the notice is received.

The committee amendments remove a provision requiring enhanced monitoring of a nursing home's direct care loss ratio following a transfer of ownership and a six-month prohibition against subsequent transfers of ownership.

The committee amendments remove a requirement that the DOH approve management delegation agreements and instead require the nursing home to provide notice to the DOH of the delegation prior to delegating substantial management control. The amendments provide that, in lieu of requiring compliance verification letters from other jurisdictions in which the third party management entity owns, operates, or manages facilities, the third party entity is to disclose any enforcement actions against a facility owned, operated, or managed by the entity in any jurisdiction. The amendments revise the look-back period for facilities owned, operated, or managed by a third party entity in other jurisdictions from five years to three years.

The committee amendments revise the requirements for transfers of the land or other real property on which a nursing home is located to remove a requirement for the entity acquiring the land or other real property to submit an application to the DOH. Instead, the prospective owner will be required to provide the DOH and the DHS with prior notice of the transaction, which will be published on the DOH's Internet website. The notice will include the same information that would have been required under the application process.

The committee amendments remove provisions that would have allowed the DOH to review lease, rent, and use rates charged to nursing homes and order adjustments in those rates when they exceed twice the fair market value for comparable land use agreements. The amendments instead require the DHS to review the direct care ratios for nursing homes to determine the average fair market lease, rent, and use rates for nursing homes, and grant the DHS the authority to cap lease, rent, and use rates, and to reduce the amount of a lease, rent, or use agreement that significantly exceeds the fair market rate for similar facilities in the same market area.

The committee amendments additionally revise the requirement for the DOH to monitor nursing homes to identify those that may be in financial distress or at risk of filing for bankruptcy protection to instead require nursing homes to report to the DOH when they miss certain payments related to debt service, rent, payroll, or payroll taxes. The actions the DOH can take to prevent a bankruptcy filing or facility closure will remain unchanged.

The committee amendments revise the effective date of the bill from 60 days after the date of enactment to 120 days after the date of enactment.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the Department of Health 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, as well as the identification of, and provision of 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.

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