

# Interim Agency of Human Services Process to Assess Transfer of Nursing Home Ownership

This Agency of Human Services (AHS) Transfer of Ownership Process for the sale of Nursing Homes supplants the Certificate of Need (CON) process previously conducted by the Green Mountain Care Board and is in effect as of July 1, 2018.

Entities interested in the purchase of a Nursing Home should submit their application to the AHS Secretary in c/o Jaime Fisher at: [AHS.Secretary@vermont.gov](mailto:AHS.Secretary@vermont.gov). Unless otherwise specified, all documents submitted to or filed with AHS shall be submitted electronically. These electronic files should be saved and submitted in a searchable, PDF format.

Please indicate in your application the names and email addresses of individuals to be notified and/or contacted in relation to your application.

## DEFINITIONS

- (1) **Nursing home** means an institution or distinct part of an institution which is primarily engaged in providing to its residents any of the following:
  - (A) skilled nursing care and related services for residents who require medical or nursing care;
  - (B) rehabilitation services for the rehabilitation of persons who are injured, have a disability, or are sick;
  - (C) on a 24-hour basis, health-related care and services to individuals who, because of their mental or physical condition, require care, and services which can be made available to them only through institutional care.
- (2) **Transfer** means the transfer or conveyance of more than 50 percent ownership interested in a nursing home.
- (3) **Special focus facility** is a facility identified by the Centers for Medicare and Medicaid Services (CMS) for enhanced attention from the State Survey Agency, and progressively increased enforcement actions from CMS, based on the provision of poor quality of care as determined by federal deficiencies over a period of time.
- (4) **Complete application** means the Agency of Human Services has received responses and materials in relation to each item listed below and any additional information requested during the thirty (30) day review period.

## **PROCESS, REVIEW, TIMELINE**

The Agency of Human Services (AHS) will review applications for transfer of ownership of existing nursing homes within a thirty (30) calendar day review period. During this review period, AHS may request any additional information it deems necessary to approve or deny the application. The time during which the applicant is responding to the Agency's request for additional information shall not count as part of the thirty (30) day review period. The Agency's decision to request additional information or allow an applicant to amend a deficient or incomplete application is discretionary.

The thirty (30) day period for review may include a required meeting with the AHS Secretary or designee to review the application and respond to any questions or concerns.

Upon completion of the thirty (30) day review period, AHS will issue a written decision approving or denying the application within forty-five (45) calendar days. The written decision will include enumerated findings of fact and conclusions of the AHS Secretary or designee.

The Secretary's final decision to approve or deny an application may be appealed to the Vermont Superior Court in accordance with provisions of Vermont Rule of Civil Procedure 75. The complaint shall be filed within thirty (30) days after the date of the written decision by the Secretary.

## **STANDARD OF REVIEW**

The Agency of Human Services shall not grant an application for the transfer of nursing home ownership unless it determines: (1) the potential buyer has the financial and administrative capacity to purchase the nursing home; and, (2) the potential buyer will operate the nursing home in a manner that will provide high-quality services and a safe and stable environment for nursing home residents. It is the applicant's burden to establish that its application for the transfer of nursing home ownership should be approved.

## **APPLICATION - REQUIRED INFORMATION**

An application for the transfer of nursing home ownership must include the following quality and financial information. If an item is not applicable, please note N/A. Your application will be deemed complete when AHS has received responses and materials in relation to each item listed below and any additional information requested during the thirty (30) day review period.

Documents submitted to AHS will become a matter of public record and will be produced in response to a public record request pursuant to 1 V.S.A § 316. If an application includes material that is considered by the applicant to be proprietary and confidential the applicant shall clearly identify each section of the application that it believes is proprietary and confidential. The applicant shall also provide a written explanation *for each marked section* explaining why such material should be considered exempt from public disclosure in the event of a public records request, pursuant to 1 V.S.A. § 317(c), including the prospective harm to the competitive position of the bidder if the identified material were to be released. Under no circumstances can the entire application be marked confidential.

Please be aware that we will be soliciting comments on your application from the Vermont Long-Term Care Ombudsman during the thirty (30) day review period.

## QUALITY INFORMATION

1. Resume of relevant work experience from all principals
2. For each nursing home owned by the potential owners (individually, as a group, or as part of a separate group) with a 5% or more controlling interest:
  - A. The names and locations of each nursing home, including city/town and state;
  - B. The CMS star rating at the time of purchase, for 3 years post-purchase on a quarterly basis, and the 3 most recent years (if ownership is less than 3 years, provide to current day or time of sale);
  - C. Dates of any CMS recertification surveys and complaint/incident investigations for 3 years post-purchase on a quarterly basis, and the 3 most recent years (if ownership is less than 3 years, provide to current day or time of sale);
  - D. Any enforcement letters from CMS which include any imposition of any enforcement action (only include actual enforcement action, not potential) for the entire time of ownership;
  - E. Information on any of the nursing homes that have been designated by CMS and/or the applicable State Agency as a "Special Focus Facility"? If applicable, please provide an explanation for each facility;
  - F. Information on any of the nursing homes that have been decertified by CMS (through either involuntary or voluntary termination). If applicable, please provide an explanation for each facility;
  - G. Information on any of the nursing homes that have had their State license revoked or suspended. If applicable, please provide an explanation for each facility.
3. Identify whether any of the potential buyers (individually, as a group, or as part of a separate group) are prohibited from purchasing or operating a Long-Term Care facility in any state.
4. Identify if any of the potential buyers (individually, as a group, or as part of a separate group) are under investigation for Medicaid or Medicare Fraud in any state at the time of application.
5. Identify if the potential buyers are planning to utilize the services of a management group. If so, please provide the name(s) of the management group or individual (this does not include the Licensed Nursing Home Administrator who will be named on the license).
6. Identify if the potential buyers are planning to utilize companies, corporations or groups, related to or already affiliated with the potential buyers, to provide any contracted services in the facility (for example: skilled therapy, dietary, housekeeping, etc.).

## FINANCIAL INFORMATION

Sole Proprietor, LLC, Partnership, S-Corporation, or Non-Profit	C-Corporation
<ul style="list-style-type: none"> <li>- Business plan as submitted for financing</li> <li>- 3 years of Federal and state business income tax returns (or corporate income tax returns if applicant has elected to be taxed as a corporation) and Federal and state individual income taxes from all associated purchasers</li> <li>- Statement of assets of purchasers</li> <li>- Audited financial statements, or internal financial statements if audited financial statements are not available, on all entities owned by all associate purchasers. To include the following items:               <ul style="list-style-type: none"> <li>▪ Profit and Loss statements for all entities owned by all the associated purchasers</li> <li>▪ Balance sheets for all entities owned by all the associated purchasers</li> </ul> </li> <li>- Copy of purchase and sales agreement</li> <li>- Letter of intent for financing from a financial institution</li> <li>- Certification <u>from applicable taxing authorities</u> that they are in good standing with state and local taxes in other locations where they operate</li> <li>- Please identify if the potential buyers are planning to utilize contracted financial services or contracted purchasing services. If so, please identify the names of the services.</li> </ul>	<ul style="list-style-type: none"> <li>- Business plan as submitted for financing</li> <li>- 3 years of Federal and state corporate income taxes</li> <li>- Audited financial statements, or internal financial statements if audited financial statements are not available, on all entities owned by all associate purchasers. To include the following items:               <ul style="list-style-type: none"> <li>▪ Profit and Loss statements for all entities owned by all the associated purchasers</li> <li>▪ Balance sheets for all entities owned by all the associated purchasers</li> </ul> </li> <li>- Copy of purchase and sales agreement</li> <li>- Letter of intent for financing from a financial institution</li> <li>- Certification <u>from applicable taxing authorities</u> that they are in good standing with state and local taxes in other locations where they operate</li> <li>- Please identify if the potential buyers are planning to utilize contracted financial services or contracted purchasing services. If so, please identify the names of the services.</li> </ul>