

No. 125. An act relating to nursing home oversight.

(H.921)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. NURSING HOME OVERSIGHT WORKING GROUP; REPORT

(a) Creation. There is created the Nursing Home Oversight Working Group to examine the oversight of nursing homes in Vermont, including financial stability and licensing criteria, in order to ensure the provision of high-quality services and a safe and stable environment for nursing home residents.

(b) Membership. The Working Group shall be composed of the following eight members:

(1) the Commissioner of Disabilities, Aging, and Independent Living or designee, who shall be the Chair;

(2) the Director of the Division of Licensing and Protection in the Department of Disabilities, Aging, and Independent Living or designee;

(3) the Director of the Division of Rate Setting in the Agency of Human Services or designee;

(4) the Vermont Attorney General or designee;

(5) the State Long-Term Care Ombudsman or designee;

(6) a representative of the Vermont Health Care Association;

(7) a member of the Department of Disabilities, Aging, and Independent Living Advisory Board selected by the Board; and

(8) a nursing home owner or administrator appointed by the Commissioner.

(c) Powers and duties. The Working Group shall:

(1) identify procedures to monitor nursing homes' ongoing financial stability and to provide for early identification of nursing homes in financial distress, including:

(A) reviewing the types and frequency of the financial data currently reported by nursing homes, including data reported pursuant to statutes, rules, and procedures, as well as to whom the data are reported and how the recipient uses the information; and

(B) developing a process for addressing circumstances in which nursing homes are determined to be in financial distress;

(2) determine whether and what types of additional financial data may be necessary to evaluate nursing homes' ongoing financial stability, including cost data related to real estate lease agreements with related or other parties resulting from the separation of the entity owning the real estate from the entity operating the facility;

(3) review, in consultation with the Green Mountain Care Board, the criteria that the Board considers in its review of applications for transfers of nursing home ownership and determine how those criteria should be addressed in the future, by whom, and as part of what process;

(4) determine the appropriate regulatory entity or entities and the resources needed to monitor the quality of care and financial stability of nursing homes on an ongoing basis;

(5) review current nursing home application and licensure requirements and identify any necessary changes, including any changes that are needed to ensure that:

(A) for the transfer of ownership of a nursing home, the purchaser has obtained the necessary financing for the transaction prior to the issuance of a license;

(B) appropriate and objective criminal background, abuse registry, regulatory, and quality information are considered prior to issuance of initial and renewal licenses; and

(C) appropriate information is disclosed through the application process to enable the identification of the ownership, controlling, and management interests in both the real estate and operations components of the nursing home; and

(6) review the Division of Rate Setting's rules regarding Medicaid reimbursements to nursing homes, including whether current reimbursement amounts support ongoing financial stability and whether a 90 percent occupancy level requirement continues to be necessary and appropriate.

(d) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Department of Disabilities, Aging, and Independent Living.

(e) Report. On or before January 15, 2019, the Working Group shall submit a written report to the House Committee on Human Services and the Senate Committee on Health and Welfare that includes its findings and any recommendations for legislative action.

Sec. 2. 18 V.S.A. § 9434 is amended to read:

§ 9434. CERTIFICATE OF NEED; GENERAL RULES

(a) A health care facility other than a hospital shall not develop or have developed on its behalf a new health care project without issuance of a certificate of need by the Board. For purposes of this subsection, a “new health care project” includes the following:

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(3) The offering of any home health service, or the transfer or conveyance of more than a 50 percent ownership interest in a health care facility other than a hospital or nursing home.

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Sec. 3. TRANSFER OF NURSING HOME OWNERSHIP; INTERIM
REVIEW PROCESS

(a) The Secretary of Human Services shall develop a process by which the Agency of Human Services shall accept and review applications for transfers

of ownership of nursing homes in lieu of the certificate of need process,

including:

(1) examining the potential buyer's financial and administrative capacity to purchase and operate the nursing home in a manner that will provide high-quality services and a safe and stable environment for nursing home residents;

(2) allowing the Agency of Human Services 30 calendar days from the date the application is complete to review the application and to request and obtain any additional information the Agency deems necessary in order to approve or deny the application for transfer of nursing home ownership; provided that the time during which the applicant is responding to the Agency's request for additional information shall not be included within the Agency's 30-day review period; and

(3) requiring the Agency of Human Services to issue a written decision approving or denying the application for transfer of nursing home ownership within 45 calendar days following the 30-day review period.

(b) Applicants who filed a letter of intent or application for a certificate of need with the Green Mountain Care Board for transfer of nursing home ownership on or before July 1, 2018 may elect to have the proposed transfer reviewed under the process established in subsection (a) of this section in lieu of continuing with the certificate of need process. Any such applicant shall file an application with the Agency of Human Services in accordance with the process established by the Secretary.

Sec. 4. EFFECTIVE DATES

(a) Sec. 1 (Nursing Home Oversight Working Group) and this section shall take effect on passage.

(b) Sec. 2 (18 V.S.A. § 9434) shall take effect on July 1, 2018 and shall apply to all transfers of ownership initiated on or after that date.

(c) Sec. 3 (transfer of nursing home ownership; interim review process) shall take effect on July 1, 2018.

Date Governor signed bill: May 10, 2018