

## Enhanced Licensing Process Proposal

**Overview:** The Enhanced Licensing Process (ELP) is designed to provide a deeper examination of factors that may influence quality outcomes to residents at the time of a change in ownership of a licensed nursing home. It is also designed to provide independent monitoring by a qualified professional of the operation of the nursing home after the sale, should that be recommended by the licensing agency. The process includes an examination of the qualifications and compliance history of the purchasers, in addition to a review of other pertinent information that may shed some light on the purchasers' intentions and ability to run a high-quality nursing home. The process includes an onsite survey prior to the purchase, conducted by nurse surveyors, to evaluate the health and safety of residents and the current operation of the facility, which will assist to develop a monitoring plan that the licensing agency will oversee. This will ensure that the licensing agency can require specific monitoring to ensure the health and safety of the residents during and after the sale.

### Process:

1. Purchasers' will be required to submit a licensing application and all materials required below at least ninety (90) days in advance of the proposed sale, directly to the licensing agency.
2. A complete application for a change in ownership will include the following (materials must clearly identify if there are any exemptions from public record disclosure):
  - a. Completed (revised) licensing application and accompanying forms. ***\*pending development of revised licensing application***
  - b. Curricula vitae from relevant principal
  - c. Organizational chart of the proposed ownership structure
  - d. Administrator, Director of Nursing, and Medical Director information
  - e. For each nursing home owned by the applicant (individually, as a group, or as part of a separate group) with a 5% or more controlling interest:
    - i. The names and locations of each nursing home, including city/town and state;
    - ii. The CMS star rating at the time of purchase, for 3 most recent years (if ownership is less than 3 years, provide from time of sale to current day);
    - iii. Copies of recertification surveys or complaint investigations (including Health and Life Safety Code) – Provide copies of recertification surveys or complaint investigations resulting in actual enforcement action by CMS and/or the State Licensing entity, including any enforcement letters, during the most recent three years of ownership.
    - iv. Identify whether any nursing home has been designated by CMS and/or applicable State Licensing entity as a "Special Focus Facility" during the period of ownership and provide an explanation for each.
    - v. Identify whether any nursing home has been decertified by CMS (voluntarily or involuntarily) during the period of ownership and provide an explanation for each.
    - vi. Identify whether any of the nursing homes have had their State license revoked or suspended and provide an explanation for each.
  - f. Identify whether any of the potential buyers (individually, as a group, or as part of a separate group) is prohibited from purchasing or operating a Long-Term Care facility in any state.



Generally, the consultant shall work between eight (8) and forty (40) hours per week for three (3) to six (6) months after the ownership change occurs.

- b. If a clinical consent order is deemed necessary, the consent order shall be signed by the purchasers.
  - c. The independent consultant shall report directly to the licensing agency with such frequency as determined by the consent order.
  - d. The licensing agency shall have full discretion regarding the hours of the consultant and the timeframe for which the monitoring must be in place.
  - e. The consultant must be retained until the consent order is fulfilled, at which time, the licensing agency will continue to oversee the health and safety of residents using its standard regulatory processes.
8. The review process will conclude in two steps:
- a. Once the above steps have been successfully completed, including signing the clinical consent order if applicable, the licensing agency will issue an approval order and the purchasers will complete the purchase of the nursing home.
  - b. The purchasers will send evidence of the completed purchase to the licensing agency, which will then issue the license to operate.
9. The purchasers shall be available to meet in-person with the licensing agency for a period of at least one year after the sale to discuss any concerns raised by the licensing agency.

**Statutory changes to be considered (still in development):**

1. **Fee collection for the transfer process, if there is going to be a fee charged.**
2. **Consent order**
3. **Whether 33 VSA § 7105 adequately addresses the licensing agency's authority to establish the above process or whether additional language is needed to address the unique requirements imposed upon purchasers involved in a transfer of ownership.**
4. **Whether amendments to 33 VSA §§7110 and/or 7111 are needed to address the content of notices for violations of the established process, including the terms of the clinical consent order, as well as the grounds for the imposition of sanctions and the nature of those sanctions.**
5. **Whether additional enabling legislation is needed in 33 VSA §7117 to expand the scope of the existing Nursing Home Regulations, or whether the current statutory language is sufficiently broad.**

**Regulatory changes to be considered (still in development):**

1. Need to amend the current Regulations to include definitions of "transfer of ownership," "consultant," "clinical consent order," etc.
2. Licensing Processes will need to be revised to include the change of ownership process and requirements. (see Section 2)
3. Regulation needed regarding sanctions for failure to follow the consent order (?)
4. Regulation needed regarding failure to adhere to plans outlined in application in terms of operating the facility (?)

**Considerations:**

This process will require a significant amount of licensing agency staff time for each transfer and a consideration should be made for more nurse surveyor and management resources to be available in the licensing agency at all times. If no additional resources are allotted and the licensing agency is required to absorb this work, it will result in less protection of residents/patients/clients of the 300+ Vermont health care providers DLP regulates.

The research for and development of a consent order template, as well as the development and implementation of the specific clinical consent orders will require a significant amount of legal resources and a consideration should be made for more legal resources to be available to the licensing agency.

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