

Enhanced Licensing Process Proposal for Changes in Ownership of Nursing Homes

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 after the sale.

**This process is contingent upon there also being a financial review by a separate entity, to include, but not limited to tax compliance in states where the potential purchasers operate. It is also contingent upon a court record review by a separate entity, to include a review of court records in states where the purchaser's other business(es) is/are located and/or states where the owners operate other facilities. The purpose of the court record search is to identify whether there are legal actions against any of the businesses or principals to include, but not limited to bankruptcy, receivership actions, contempt of court and vendor payment issues.*

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 principals
 - 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 **ownership** 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. *Also include any letters indicating pending enforcement actions that have not yet been imposed.*

- 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 **currently, or has been prohibited in the past.**
 - g. Identify if any of the potential buyers (individually, as a group, or as part of a separate group) is under investigation for Medicaid or Medicare Fraud, or prohibited from participating in Medicare or Medicaid, in any state, at the time of application.
 - h. Identify if the potential buyers are planning to utilize the services of a management group or company. If so, 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). **[question posed – should this also be part of a financial review?]**
 - i. 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.). If so, provide the name(s) of the related entities and identify the relation and correlating ownership interest. **[question posed – also be part of a financial review?]**
 - j. **National** criminal background and abuse registry checks on all principals.
 - k. Evidence of approval of the AHS Pre-purchase Financial Review committee.
 - l. **Evidence of approval from the legal entity conducting the court record search.**
3. The application will be reviewed for completeness within 30 days of receipt. If further materials are submitted or corrections need to be made to any of the application materials, the licensing agency will have 30 days from the receipt of the revised information to review for completeness. Once an application is considered complete, the licensing agency has 60 days to complete the remainder of the process.
4. Concurrently, the licensing agency will be soliciting information and/or comments from the Vermont Long Term Care Ombudsman and from the licensing entities in other states where the purchasers operate (if applicable). The licensing agency may request additional information from the purchasers at any time during the process and may review any publicly available information regarding the purchasers and/or other facilities they operate. Any delay in the receipt of additional requested information will extend the licensing agency’s time-frames for process completion.
5. Once the application is deemed complete, the licensing agency **may require** a face-to-face meeting with all principals at the licensing agency office, **which may also include the financial review entity and the legal review entity.**
6. An onsite survey will be conducted at the facility by the licensing agency within 60 days of the submission of a complete application to assess the compliance of the nursing home.

7. The results of that survey will provide the licensing agency with information about **the condition of the physical building, the systems needing improvement** and the ability of the nursing home to provide high-quality care. Based on the results and the information collected during the application review process, the licensing agency will either determine that no independent monitoring is needed or will mandate the use of an independent, qualified consultant.
 - a. The independent consultant, **if applicable**, will be mandated through the use of a clinical consent order, which shall address the number of hours per week the consultant shall be required to be in the building. ****pending development of a consent order template.*** The clinical consent order will require the purchaser(s) to hire an independent, qualified consultant to monitor the home's performance after the ownership transition for a period of months after the change occurs.
 - b. **Criteria taken into consideration for the clinical consent order.**
 - i. **Onsite survey results;**
 - ii. **Application material review results;**
 - iii. **Financial review results;**
 - iv. **Legal review results;**
 - v. **Feedback from LTC ombudsman;**
 - vi. **Feedback from other State Survey Agencies.**
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 order of decision and the purchasers will complete the purchase of the nursing home if approval is given.
 - b. The purchasers will send evidence of the completed purchase to the licensing agency, which will then issue the license to operate.
 - c. If the transfer of ownership is not approved, the order of decision will state the reasons.
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. **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.**
3. **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.**
4. **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.**
5. **Whether statutory change is needed to require national background checks.**

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.

Resource Considerations:

This process will not be implemented using our current resources. 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 statutory and regulatory changes required will require a significant amount of legal resources. The research for and development of a consent order template, as well as the development and implementation of the specific clinical consent orders will also require a significant amount of legal resources and a consideration should be made for more legal resources to be available to the licensing agency.

The interim AHS review process has taken a significant amount of days/hours away from the regulation of health care facilities. The work DAIL/DLP is doing to implement the AHS interim review process during the development of a final process (to replace the Green Mountain Care Board’s CON review) should result in a position being transitioned from the GMCB to DAIL immediately, in order to continue to protect individuals receiving care in Vermont health care facilities and by Vermont health care providers.