

Testimony provided by Clayton Clark, Director of the Division of Licensing and Protection, to the House Human Services Committee on January 31st, 2018.

Findings and Recommendations Regarding NH CON and Licensure

Findings from group discussion with:

Green Mountain Care Board

Department of Disabilities, Aging, and Independent Living

Division of Rate Setting

Group Findings:

- The low profitability of nursing homes creates an environment that discourages potential owners from viewing nursing homes as viable, long-term business opportunities.
 - In the absence of long-term profitability, nationwide and now in Vermont, nursing homes are an attractive business opportunity to owners seeking short term gains that have a high probability of resulting in closure.
 - These practices, in so far as we have seen, are legal even though the outcomes are negative to residents and the geographic availability of nursing home care.
 - In the absence of long-term profitability, we believe Vermont may see a reduction in the number of nursing homes as owners are unable to find suitable buyers, which will adversely affect residents and the geographic availability of nursing home care.
- The existing CON process for transfer of ownership for nursing homes doesn't match the intent of the GMCB's mission to prevent overcapacity of healthcare resources because the transfers generally do not involve a change in capacity, nor does it constitute a new health care project or service.
- The existing CON process for transfer of ownership for nursing homes managed by GMCB is time (12-18 months) and resource (\$200,000-\$300,000) intensive, impedes work on other pending CONs, and provides little value in protecting nursing home residents.
- The existing CON process for transfer of ownership for nursing homes managed by GMCB has limited accountability, as the GMCB does not retain jurisdiction over a facility's quality or finances.
- The existing licensing requirements used by DAIL are limited by regulation only to the health and safety of residents and do not address business practices, rates, or long-term financial solvency.
- The existing licensing requirements used by DAIL require annual renewals regardless of changes in ownership, although a change of ownership will require that the new owner obtain a license prior to operating.
- There may be a conflict of interest in having DAIL be responsible both for the processes that impose financial penalties on nursing homes and be responsible for assuring the financial health of a nursing home.

- DAIL and Rate Setting do not presently have the capacity or skillsets to effectively expand licensing requirements to cover ongoing business practices and financial evaluations of business practices. Furthermore, licensing is beyond the scope of the GMCB.
- There are presently no barriers to prevent the sale of a nursing home to purchasers using financial practices that could undermine the long term viability of the facility, such as a Real Estate Investment Trust (REIT).

DAIL's Recommendation:

The creation of a holistic evaluation of the process for transfer of ownership of nursing homes that considers the following:

- Examining how changes in ownership of nursing homes are reviewed and recommending changes, as appropriate.
- Expanding the scope of licensure requirements for both licenses issued to new owners and for renewals to existing owners, creating a system where facilities are accountable to plans established as part of any licensing or CON process.
- Determining the appropriate location for expanded licensure within state government.
- Determining the appropriate resources required to issue and monitor licenses.
- Determining if new licensing processes should be applicable to nursing homes only or expanded to cover other facility types.
- Sufficiency of nursing home rates.