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§§2-4 -
C.26:2H-7.25 to
26:2H-7.27
§5 - C.26:2H-42.1
§6 - Note

P.L. 2021, CHAPTER 95, *approved May 12, 2021*
Assembly, No. 4477 (*Second Reprint*)

1 AN ACT concerning ¹**【long-term care facilities】** nursing homes¹ ,
2 amending P.L.1987, c.322, and supplementing Title 26 of the
3 Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.1987, c.322 (C.26:2H-7.2) is amended to read
9 as follows:

10 1. Notwithstanding the provisions of section 7 of P.L.1971, c.136
11 (C.26:2H-7) to the contrary, a nursing home which proposes to
12 increase the total number of licensed beds contained therein by not
13 more than 10 beds or 10% of its licensed bed capacity, whichever is
14 less, within a period of five years is exempt from the requirement of
15 obtaining a certificate of need if the nursing home is in compliance
16 with all State regulations governing its operations. No ¹**【transfer of**
17 **a】**¹ licensed bed that is added by a nursing home in accordance with
18 the requirements of this section ¹**【to another nursing home】**¹ , and no
19 ¹**【transfer of a】**¹ licensed bed that is part of an unimplemented
20 certificate of need ¹ , may be sold or transferred¹ to any other nursing
21 home ¹**【**, shall be authorized except upon application for and receipt of
22 a certificate of need as provided by P.L.1971, c.136 (C.26:2H-1 et
23 seq.)² except upon application for and receipt of a certificate of need
24 as provided by P.L.1971, c.136 (C.26:2H-1 et seq.)² . A nursing
25 home that has removed beds from its license within the preceding five
26 years shall not be eligible to increase its licensed bed capacity under
27 the provisions of this section¹ .

28 (cf: P.L.1987, c.322, s.1)

29

30 2. (New section) a. ¹**【The transfer of ownership of a long-term**
31 **care facility shall not require a certificate of need except when the**
32 **proposed owner does not satisfy the Department of Health's track**
33 **record review, including a review of the dashboard data for the facility**
34 **published pursuant to subsection f. of section 3 of P.L. ,**
35 **c. (C.) (pending before the Legislature as Senate Bill No. 2759**
36 **or Assembly Bill No. 4478 of 2020/2021) for the preceding three**
37 **years, if available.**

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】 in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted October 26, 2020.

²Assembly floor amendments adopted March 1, 2021.

1 b. ¹ Prior to transferring ownership of a ¹ long-term care facility
2 nursing home¹ , the prospective new owner shall submit an application
3 to the ¹ Long Term Care Licensing and Certification Program
4 Department of Health^{1 2} that meets the requirements of section 3 of this
5 act² . The application shall include the following items:

6 (1) the transfer of ownership fee established by the department;

7 (2) a cover letter stating the applicant's intent to purchase the
8 ¹ long-term care facility nursing home¹ , and identification of the
9 ¹ facility nursing home¹ by name, address, county, and number and
10 type of licensed beds;

11 (3) a description of the proposed transaction, including:

12 (a) identification of the current owners of the ¹ long-term care
13 facility nursing home¹ ;

14 (b) identification of 100 percent of the proposed new owners,
15 including the names and addresses of all principals ¹ and interested
16 parties¹ ; and

17 (c) if applicable, a copy of an organizational chart, including
18 parent corporations and wholly-owned subsidiaries; ² and²

19 (4) a copy of the agreement of sale and, if applicable, a copy of
20 any lease and management agreements ² ;

21 (5) a projection of profits and losses for the next three years and a
22 capital budget projection for the next three years; and

23 (6) disclosure of any licensed health care facilities owned,
24 operated, or managed by the proposed owners and principals in any
25 state or territory of the United States or in the District of Columbia in
26 the preceding ¹ five three¹ years, along with ¹ audited owner-
27 certified¹ financial statements for each such facility for the last three
28 years during which the facility was owned, operated, or managed by
29 ¹ the third party entity owner or principal¹ . If the owners or
30 principals own, operate, or manage facilities located outside New
31 Jersey, the application shall include ¹ letters from the regulatory
32 agency in each jurisdiction in which a facility is owned, operated, or
33 managed, verifying that the facility was operated in substantial
34 compliance with the laws of that jurisdiction throughout the preceding
35 five year period or for such time during that period as the third party
36 entity owned, operated, or managed the facility, and that the facility
37 has had no disclosures by the applicant as to any¹ enforcement
38 actions imposed during that period of time ¹ against any facility owned,
39 operated, or managed by the applicant in any jurisdiction² .

40 The applicant may additionally submit a summary of the
41 application materials that includes such details concerning the
42 application as are required by the department, but that omits any
43 proprietary information in the contracts for the sale or management of
44 the nursing home, and any home addresses, social security numbers, or
45 other personal information of any proposed owner, principal, or
46 interested party. A summary prepared by the applicant may only be

1 used for the purposes of posting information concerning the
2 application on the department's Internet website pursuant to paragraph
3 (1) of subsection ²[e.] d.² of this section.

4 b. Information submitted pursuant to subsection a. of this section
5 ²or subsection a. of section 3 of this act² by an applicant for transfer of
6 ownership of a nursing home shall not be used in any adverse licensure
7 action or disciplinary action against the applicant¹.

8 c. Approval of a transfer of ownership of a ¹[long-term care
9 facility] nursing home¹ is contingent upon:

10 (1) a review of the applicant's ¹[track record by the department,
11 including a review of the dashboard data published pursuant to
12 subsection f. of section 3 of P.L. , c. (C.) (pending before the
13 Legislature as Senate Bill No. 2759 or Assembly Bill No. 4478 of
14 2020/2021) for] history of disciplinary actions assessed in connection
15 with¹ any other facility owned, operated, or managed by the proposed
16 owners and principals in New Jersey, and a determination based on
17 that review that approval of the transfer of ownership will not present a
18 material risk to the health, safety, or welfare of residents of the
19 ¹[facility] nursing home¹ that is the subject of the transfer application;
20 ²and²

21 (2) payment of all outstanding ¹and issued¹ Medicaid audit claims
22 and State penalties issued by the department against the current owner,
23 ¹[or] unless such claims remain under appeal, in which case, if the
24 claim remains under appeal, the applicant shall submit¹ written
25 verification ¹[by the applicant]¹ that ¹either¹ the applicant ¹or the
26 current owners of the nursing home¹ will assume responsibility for
27 payment of such audit ¹[findings] recoveries¹ and State penalties ¹at
28 the conclusion of the appeal¹ ²]; and

29 (3) ¹consistent with the requirements of subsection d. of this
30 section,¹ a criminal history background check of each proposed owner
31 and principal and a determination that no proposed owner or principal
32 has a prior conviction involving fraud or any other criminal offense of
33 a financial nature, or a prior conviction that may bear on the health and
34 safety of residents of a long-term care facility, including, but not
35 limited to, a prior conviction involving abuse, neglect, or exploitation
36 of any person]².

37 d. ²[For the purposes of paragraph (3) of subsection c. of this
38 section, the department is authorized to exchange fingerprint data with
39 and receive criminal history record background information from the
40 Division of State Police and the Federal Bureau of Investigation
41 consistent with the provisions of applicable federal and State laws,
42 rules, and regulations. Upon receipt of such notification, the
43 department shall make a determination as to whether transferring all or
44 part of the ownership of a ¹[long-term care facility] nursing home¹ to
45 the applicant would constitute a material risk to the health, safety, or
46 welfare of residents of the ¹[facility] nursing home¹. An applicant for

1 a transfer of ownership of a ¹~~long-term care facility~~ nursing home¹
2 who is required to complete a criminal history record background
3 check pursuant to this section shall submit to being fingerprinted in
4 accordance with applicable State and federal laws, rules, and
5 regulations. An applicant shall bear the cost for the criminal history
6 record background check, including all costs of administering and
7 processing the check. ¹The Division of State Police shall promptly
8 notify the department in the event that an individual who was the
9 subject of a criminal history record background check conducted
10 pursuant to paragraph (3) of subsection c. of this section is convicted
11 of a crime or offense in this State after the date the background check
12 was performed. Upon receipt of that notification, the department shall
13 make a determination regarding the continued eligibility for the
14 individual to be an owner or principal of a nursing home.¹

15 e.]² ¹~~Transfer~~ (1) A copy of each transfer¹ of ownership
16 application ¹~~materials~~ , or a summary of the application prepared by
17 the applicant that includes the names of the proposed owners,
18 principals, and interested parties,¹ shall ¹be¹ published on the
19 department's Internet website ¹~~and~~ no later than 30 days after the
20 date the department receives the application; provided that the
21 department shall redact the materials to the extent necessary to ensure
22 that no proprietary information in the contracts for the sale or
23 management of the nursing home, and no home addresses, social
24 security numbers, or other personal information of any proposed
25 owner, principal, or interested party, is included in the materials
26 published on the department's Internet website.

27 (2) Each application for the transfer of ownership of a nursing
28 home¹ shall be subject to ¹a¹ public comment ¹~~for a~~ ¹period ¹~~of~~
29 that shall commence¹ not less than 30 days ¹~~following submission~~
30 and publication of after the date¹ the application ¹is received by the
31 department, and which comment period shall remain open for a period
32 of not less than 30 days. The department shall establish a procedure
33 for acknowledging receipt of public comments submitted. The text of
34 comments submitted on a transfer of ownership application shall not
35 be published on the department's Internet website, but shall be
36 considered a ²~~public~~ ²government² record pursuant to P.L.1963, c.73
37 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et al.)¹ .

38 ¹~~The department may~~ ²~~(3)~~ Each nursing home that is the
39 subject of an application for a transfer of ownership shall¹ hold a
40 public hearing on the application ¹~~upon request by the applicant, the~~
41 current owner, or at least 15 members of the public, in which case the
42 no earlier than 30 days after the date the application is received by the
43 department. Notice of the public hearing shall be published at least
44 seven days in advance of the public hearing on the Internet websites of
45 the department, the nursing home, and the applicant, as well as in at
46 least one newspaper published in each county, if any newspapers are

1 published therein. The nursing home shall invite the Attorney General
2 and the Commissioner of Health, or their designated representatives, to
3 attend the hearing. The transfer of ownership¹ application may not be
4 approved until after the public hearing is completed.

5 f. The department shall not issue final approval for a transfer of
6 ownership of a ¹~~["long-term care facility"]~~ nursing home¹ under this
7 section if the department identifies any unresolved issues or questions
8 concerning any proposed owner or principal identified in the
9 application. The department may issue conditional approval of the
10 transfer pending final resolution of all unresolved issues and questions,
11 subject to appointment of a receiver or temporary manager of the
12 facility at the applicant's expense.² ¹~~["The department may enter into~~
13 ~~a standing contract with a third party entity to provide receivership or~~
14 ~~temporary management services for the purposes of this subsection. A~~
15 ~~receiver or temporary manager appointed pursuant to this subsection~~
16 ~~shall have the authority to:~~

17 (1) make any repairs, improvements, or expenditures necessary to
18 preserve the health and safety of residents and staff at the facility and
19 to ameliorate any condition presenting a significant risk to the health
20 or safety of residents or staff of the facility, and to direct the method or
21 procedures by which this shall be accomplished;

22 (2) hire employees as needed to maintain mandatory staffing
23 levels;

24 (3) receive or expend in a reasonable and prudent manner the
25 revenues of the facility during the appointment period;

26 (4) continue the business of the facility and the care of the
27 residents of the facility in all aspects;

28 (5) perform all acts necessary or appropriate to conserve the
29 property and promote the health, safety, and welfare of the residents of
30 the facility; and

31 (6) exercise any other powers or authority conferred by the
32 department by regulation or in the appointment agreement.¹

33 ²~~["g. When"]~~ e. The Department shall complete review of any
34 transfer of ownership application submitted pursuant to subsection a.
35 of this section no later than 120 days after the date the application is
36 received. If² a transfer of ownership application has been reviewed
37 and deemed acceptable, ¹the department shall send¹ an approval letter
38 ¹~~["from the Long-Term Care Licensing and Certification Program shall~~
39 ~~be sent"]¹ to the applicant ¹~~["along with licensure application forms"]¹ .~~~~

40 ²~~["h."]~~ f.² Within five days after the transaction has been
41 completed, the applicant shall submit ¹["the following documents to the
42 Long-Term Care Licensing and Certification Program:

43 (1) completed licensure application forms;

44 (2) to the department certification of closing from an attorney or¹
45 a notarized letter ¹from the applicant¹ stating the date on which the
46 transaction occurred ¹["]; and

1 (3) a copy of a certificate of continuing occupancy from the local
 2 township, or a letter from the township verifying a policy of not
 3 issuing any such document for changes of ownership] , along with an
 4 executed bill of sale or assignment. To facilitate the timely transfer of
 5 Medicare and Medicaid provider numbers, the department shall issue
 6 the new license to the applicant no later than 30 days after the date the
 7 notice is received by the department¹ .

8 ²[i.]² ¹[[The department shall provide for enhanced monitoring of
 9 direct care loss ratios reported by a long-term care facility pursuant to
 10 subsection c. of section 3 of P.L. , c. (C.) (pending before the
 11 Legislature as Senate Bill No.2758 or Assembly Bill No.4482 of
 12 2020/2021) for three years following a transfer of ownership of the
 13 long-term care facility.

14 j. For a period of six months following the date a transfer of
 15 ownership of a long-term care facility is approved under this section,
 16 no other transfer of ownership of that long-term care facility shall be
 17 approved.

18 k.]¹ ²g.² No ¹[[long-term care facility] nursing home¹ may
 19 delegate ¹substantial¹ management ¹control¹ of the ¹[[facility] nursing
 20 home's operations¹ to a third party entity without ¹providing¹ prior
 21 ¹[[approval by] written notice to¹ the department. The ¹notice
 22 provided by the¹ owners of the facility ¹[[shall submit]]¹ to the
 23 department ¹[[for approval] shall include¹ :

24 (1) a copy of the management agreement;

25 (2) an organizational chart of the third party entity's proposed
 26 management team for the ¹[[facility] nursing home¹ ;

27 (3) the names and addresses of all owners ¹[[and] ,¹ principals ¹ ,
 28 and interested parties¹ of the third party entity; and

29 (4) a list of any other licensed health care facilities owned,
 30 operated, or managed by the third party entity in any state or territory
 31 of the United States or in the District of Columbia for the preceding
 32 ¹[[five] three¹ years, along with ¹[[audited] owner-certified¹ financial
 33 statements for each such facility for the last three years during which
 34 the facility was owned, operated, or managed by the third party entity.
 35 If the third party entity owned, operated, or managed facilities located
 36 outside New Jersey in the preceding ¹[[five] three¹ years, the
 37 application shall include ¹[[letters from the regulatory agency in each
 38 jurisdiction in which the third party entity owned, operated, or
 39 managed facility in the preceding five years verifying that the facility
 40 was operated in substantial compliance with the laws of that
 41 jurisdiction throughout the preceding five year period or for such time
 42 during that period as the third party entity owned, operated, or
 43 managed the facility, and that the facility has had no] disclosures by
 44 the third party entity of any¹ enforcement actions imposed during that
 45 period of time ¹against any facility owned, operated, or managed by
 46 the third party entity in any jurisdiction¹ .

1 ¹1. ²j. ¹ h. ² (1) Upon request by the Commissioner of Health
 2 and subject to the provisions of P.L.1968, c.266 (C.52:9M-1 et seq.),
 3 the State Commission of Investigation shall undertake an investigation
 4 of one or more ¹long-term care facilities] nursing homes¹ in the State
 5 or the entities owning, operating, or managing one or ¹long-term care
 6 facilities] more nursing homes¹ in the State, provided that, if the
 7 commission determines that the request for an investigation from
 8 Commissioner of Health exceeds the commission's capacity to perform
 9 such investigations, the commission may advise the Commissioner of
 10 Health as to any requests upon which it finds itself unable to proceed.
 11 The State Commission of Investigation may, at any time, submit to the
 12 Governor, the Commissioners of Health and Human Services, and,
 13 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the
 14 Legislature, recommendations for administrative or legislative action
 15 to improve oversight and transparency in ¹long-term care facilities]
 16 nursing homes¹ .

17 (2) ²Upon approval by the Senate President and the Speaker of
 18 the General Assembly, the State Auditor shall undertake an
 19 investigation of one or more ¹long-term care facilities] nursing
 20 homes¹ in the State or the entities owning, operating, or managing one
 21 or ¹long-term care facilities] more nursing homes¹ in the State.

22 (3) ² The State Auditor shall undertake a review of the oversight
 23 of ¹long-term care facilities] nursing homes¹ by the Department of
 24 Health and the Department of Human Services at least once every
 25 three years, with particular focus on compliance with federal
 26 inspection requirements, responses to complaints and response times
 27 in reviewing complaints, and actions taken to follow up on violations
 28 affecting the health, safety, or welfare of residents.

29 ¹m. ²k. ¹ i. ² As used in ²this section and in section 3]
 30 sections 2 through 4² of this act ¹], "principal"] :

31 "Interested party¹ means any individual or entity with an interest of
 32 ¹five percent or more] one percent or more but less than ²10] five²
 33 percent¹ in an applicant to receive a transfer of ownership of a ¹long-
 34 term care facility] nursing home or the land or other real property on
 35 which a nursing home is located.

36 "Principal" means any individual or entity with an interest of
 37 ²10] five² percent or more in an applicant to receive a transfer of
 38 ownership of a nursing home or the land or real property on which a
 39 nursing home is located¹ .

40
 41 ²3. (New section) a. A transfer of ownership application
 42 submitted to the Department of Health pursuant to subsection a. of
 43 section 2 of this act shall meet the following requirements:

44 (1) In the case of an application to transfer controlling interest in a
 45 nursing home to an individual or entity that has never previously
 46 owned or operated a licensed health care facility in New Jersey, or for

1 any application to transfer controlling interest in a nursing home that is
2 submitted within six months after a prior application for transfer of
3 controlling interest in the nursing home was approved, the applicant
4 shall:

5 (a) submit a projection of profits and losses for the next three years
6 and a capital budget projection for the next three years;

7 (b) disclose any licensed health care facilities owned, operated, or
8 managed by the proposed owners and principals in any state or
9 territory of the United States or in the District of Columbia in the
10 preceding three years, along with owner-certified financial statements
11 for each such facility for the last three years during which the facility
12 was owned, operated, or managed by owner or principal and
13 disclosures by the applicant as to any enforcement actions imposed
14 during that period of time against any facility owned, operated, or
15 managed by the applicant in any jurisdiction;

16 (c) hold a public hearing on the application no earlier than 30 days
17 after the date the application is received by the department. Notice of
18 the public hearing shall be published at least seven days in advance of
19 the public hearing on the Internet websites of the department, the
20 nursing home, and the applicant, as well as in at least one newspaper
21 published in each county, if any newspapers are published therein.
22 The nursing home shall invite the Attorney General and the
23 Commissioner of Health, or their designated representatives, to attend
24 the hearing. The transfer of ownership application may not be
25 approved until after the public hearing is completed; and

26 (d) consistent with the requirements of subsection b. of this
27 section, submit to a criminal history record background check of each
28 proposed owner and principal;

29 (2) In the case of an application to transfer controlling interest in a
30 nursing home to an individual or entity that has previously owned or
31 operated a licensed health care facility in New Jersey, the applicant
32 shall:

33 (a) submit a projection of profits and losses for the next three years
34 and a capital budget projection for the next three years; and

35 (b) disclose any licensed health care facilities owned, operated, or
36 managed by the proposed owners and principals in any state or
37 territory of the United States or in the District of Columbia in the
38 preceding year, along with owner-certified financial statements for
39 each facility owned, operated, or managed by the proposed owners and
40 principals in New Jersey for the last year during which the facility was
41 owned, operated, or managed by owner or principal;

42 (3) In the case of an application to transfer less than a controlling
43 interest in a nursing home to an individual or entity that has never
44 previously owned or operated a licensed health care facility in New
45 Jersey, the applicant shall:

46 (a) disclose any licensed health care facilities owned, operated, or
47 managed by the proposed owners and principals in any state or
48 territory of the United States or in the District of Columbia in the

1 preceding year and any enforcement actions imposed during the
2 preceding year against any facility owned, operated, or managed by
3 the applicant in any jurisdiction; and

4 (b) consistent with the requirements of subsection b. of this
5 section, submit to a criminal history record background check of each
6 proposed owner and principal; and

7 (4) In the case of an application to transfer less than a controlling
8 interest in a nursing home to an individual or entity that has previously
9 owned or operated a licensed health care facility in New Jersey, the
10 applicant shall disclose any licensed health care facilities owned,
11 operated, or managed by the proposed owners and principals in any
12 state or territory of the United States or in the District of Columbia in
13 the preceding year and any enforcement actions imposed during the
14 preceding year against any facility owned, operated, or managed by
15 the applicant in any jurisdiction.

16 b. (1) An applicant for a transfer of ownership of a nursing home
17 who is required to complete a criminal history record background
18 check pursuant to subsection a. of this section shall submit to being
19 fingerprinted in accordance with applicable State and federal laws,
20 rules, and regulations. An applicant shall bear the cost for the criminal
21 history record background check, including all costs of administering
22 and processing the check.

23 (2) For the purposes of subsection a. of this section, the department
24 is authorized to exchange fingerprint data with and receive criminal
25 history record background information from the Division of State
26 Police and the Federal Bureau of Investigation consistent with the
27 provisions of applicable federal and State laws, rules, and regulations.
28 Upon receipt of such notification, the department shall make a
29 determination as to whether transferring all or part of the ownership of
30 a nursing home to the applicant would constitute a material risk to the
31 health, safety, or welfare of residents of the nursing home, which shall
32 include determining whether any owner or principal has a prior
33 conviction involving fraud or any other criminal offense of a financial
34 nature, or a prior conviction that may bear on the health and safety of
35 residents of a long-term care facility, including, but not limited to, a
36 prior conviction involving abuse, neglect, or exploitation of any
37 person.

38 (3) The Division of State Police shall promptly notify the
39 department in the event that an individual who was the subject of a
40 criminal history record background check conducted pursuant to
41 subsection a. of this section is convicted of a crime or offense in this
42 State after the date the background check was performed. Upon
43 receipt of that notification, the department shall make a determination
44 regarding the continued eligibility for the individual to be an owner or
45 principal of a nursing home.²

46
47 ²**[3.]** 4.² (New section) a. ¹**[**The sale or transfer of the land or
48 other real property on which a long-term care facility is located shall

1 not require a certificate of need except when the proposed owner does
2 not satisfy the Department of Health's track record review, including a
3 review of the dashboard data published pursuant to subsection f. of
4 section 3 of P.L. , c. (C.) (pending before the Legislature as
5 Senate Bill No. 2759 or Assembly Bill No. 4478 of 2020/2021) for the
6 facility for the preceding three years, if available.

7 b.]¹ Prior to selling or transferring ownership of the land or other
8 real property on which a ¹long-term care facility nursing home¹ is
9 located, the prospective new owner shall submit ¹an application to
10 the Long Term Care Licensing and Certification Program. The
11 application notice to the Department of Health and the Department of
12 Human Services, which notice¹ shall include the following items:

13 (1) the sale or transfer of real property fee established by the
14 ¹department Department of Health¹ ;

15 (2) a cover letter stating the applicant's intent to purchase the land
16 or other real property on which a ¹long-term care facility nursing
17 home¹ is located, and identification of the ¹facility nursing home¹
18 by name, address, and county;

19 (3) a description of the proposed transaction, including:

20 (a) identification of the current owners of the land or other real
21 property on which a ¹long-term care facility nursing home¹ is
22 located;

23 (b) identification of 100 percent of the proposed new owners,
24 including the names and addresses of all principals ¹and interested
25 parties¹ ; and

26 (c) if applicable, a copy of an organizational chart, including
27 parent corporations and wholly-owned subsidiaries;

28 (4) a copy of the agreement of sale or transfer, the proposed terms
29 of the lease, rent, or use agreement with the ¹long-term care facility
30 nursing home¹ and, if applicable, a copy of any management
31 agreements; and

32 (5) an attestation ¹that by¹ the new owners ¹of the land or other
33 real property that they¹ will lease, rent, or authorize use of the land or
34 other real property by the ¹long-term care facility nursing home¹ at
35 a rate that is ¹no more than twice the prevailing consistent with the¹
36 fair market ¹rate value¹ for the lease, rent, or use of ¹real property
37 by a long-term care facility, as compared with comparable uses in
38 comparable locations and settings at the time the lease, rental, or use
39 agreement is executed] similar facilities in the same market area.

40 b. A summary of the notice submitted pursuant to subsection a. of
41 this section, including the names of the prospective new owners, shall
42 be made available on the Department of Health's Internet website¹ .

43 c. ¹Sale and transfer of ownership application materials for the
44 land or real property on which a long-term care facility is located shall
45 be made available on the department's Internet website and shall be
46 subject to public comment for a period of not less than 30 days

1 following submission and publication of the application. The
2 department may hold a public hearing on the application upon request
3 by the applicant, the current owner, or at least 15 members of the
4 public, in which case the application may not be approved until after
5 the public hearing is completed.

6 d. The department shall not issue final approval for a sale or
7 transfer of ownership of the land or other real property on which a
8 long-term care facility is located under this section if the department
9 identifies any unresolved issues or questions concerning any proposed
10 owner or principal identified in the application.

11 e. (1) The owner of land or real property on which a long-term
12 care facility is located shall submit to the department a copy of any
13 lease, rent, or use agreement executed by the owner of the land or real
14 property and the long-term care facility on or after the effective date of
15 this act, which agreement shall be submitted to the department no later
16 than 30 days after the date the agreement is executed. The department
17 shall review the terms of the agreement and determine whether the
18 amount charged for the lease, rent, or use of the land or real property
19 exceeds more than twice the fair market value for the lease, rent, or
20 use of land or real property by a long-term care facility, based on an
21 assessment of comparable uses in comparable locations and settings.

22 (2) If the department determines that the terms of the lease, rent, or
23 use agreement for land or real property by a long-term care facility
24 exceed twice the prevailing fair market rate for the lease, rent, or use
25 of real property by a long-term care facility, the department may:

26 (a) require the owner of the land or real property to reimburse the
27 long-term care facility the balance of any payments made for the lease,
28 rent, or use of the land or real property under the current agreement
29 that were in excess of twice the prevailing fair market value for the
30 lease, rent, or use of the real property by the long-term care facility;
31 and

32 (b) require the parties to the agreement to execute a revised
33 agreement under lease, rent, or use terms that do not exceed twice the
34 fair market rate for the lease, rent, or use of land or real property by a
35 long-term care facility.

36 (3) The owner of land or real property on which a long-term care
37 facility is located may request review of the department's
38 determination of the prevailing fair market value of the lease, rent, or
39 use of land or real property by a long-term care facility, which review
40 shall be conducted by the Commissioner of Health. The
41 commissioner's determination upon review shall constitute a final
42 agency decision subject to review by the Appellate Division of the
43 Superior Court】

44 ²【(1) The Department of Human Services shall utilize the direct
45 care ratios reported pursuant to subsection c. of section 3 of P.L.2020,
46 c.89 (C.30:4D-7cc) to determine the】 Nursing homes shall report to
47 the Department of Health their rates or² average rates for the lease,

1 rent, or use of land or other real property ²by nursing homes in the
 2 State, which average rates shall be adjusted in each market area to
 3 account for factors that affect the average lease, rent, or use rates in
 4 that market area.

5 (2) The Department of Human Services shall have the authority to:

6 (a) establish a cap on the amount that may be paid by a nursing
 7 home for the lease, rent, or use of land or other real property by the
 8 nursing home;

9 (b) determine whether a nursing home is paying a lease, rent, or
 10 use rate for land or other real property that significantly exceeds the
 11 fair market value for similar facilities in the same market area to lease,
 12 rent, or use land or other real property; and

13 (c) require that any lease, rent, or use rate paid by a nursing home
 14 that significantly exceeds the fair market value for the lease, rent, or
 15 use of similar facilities in that market area be reduced, for the duration
 16 of the current lease, rent, or use agreement, to match the average lease,
 17 rent, or use rate for similar facilities in the same market area¹ in a
 18 manner determined by the department. The department shall post the
 19 rates or average rates for the lease, rent, or use of land or other real
 20 property reported by nursing homes on its Internet website².

21
 22 ²[4.] 5.² (New section) The Department of ¹[Health shall use
 23 the information reported by long-term care facilities pursuant to
 24 P.L. , c. (C.) (pending before the Legislature as Senate Bill No.
 25 2759 or Assembly Bill No. 4478 of 2020/2021) to identify facilities]
 26 ²[Human Services shall utilize the direct care ratios reported pursuant
 27 to subsection c. of section 3 of P.L.2020, c.89 (C.30:4D-7cc) to assist
 28 the Department of Health identifying] Health shall as necessary, with
 29 assistance from the Department of Human Services, identify² nursing
 30 homes¹ that may be in acute financial distress or at risk of filing for
 31 bankruptcy protection ¹[, and] ²[. The Department of Health shall¹
 32 develop strategies to assist those ¹[facilities in avoiding] nursing
 33 homes that are determined to be in acute financial distress or at risk of
 34 filing for bankruptcy protection to avoid¹ bankruptcy or the need to
 35 close] by requiring each nursing home to report, within five business
 36 days, any default in the punctual payment when due of any: debt
 37 service payment where the debt is secured by real estate or assets of
 38 the nursing home; rent payment; payroll; or payroll tax obligation².
 39 The ¹[department] ²[Department of Health¹] department² may, as
 40 appropriate:

41 a. ²[Provide] provide, at the nursing home's expense, or direct
 42 such nursing home to² management support services and resources, as
 43 well as any other supports as may be necessary and appropriate to
 44 avoid bankruptcy proceedings or cessation of operations;

45 b. ²[Initiate] if the nursing homes does not take sufficient and
 46 timely action to avoid an impending bankruptcy or closure, and if the

1 department finds the bankruptcy or closure would have a significant
 2 adverse effect on the health, safety, and welfare of the residents of the
 3 nursing home or would leave the area in which the nursing home is
 4 located lacking sufficient nursing home services after assessing the
 5 need for and availability of other nursing home services in the area,
 6 initiate² proceedings in a court of competent jurisdiction for the
 7 appointment of a receiver for the ¹**【long-term care facility】** nursing
 8 home¹, which receiver shall have the powers and authorities conferred
 9 by the order of receivership, which may include, but shall not be
 10 limited to, the authority to:

11 (1) hire any consultants or to undertake any studies of the
 12 ¹**【facility】** nursing home¹ the receiver deems appropriate;

13 (2) make any repairs or improvements as are necessary to ensure
 14 the safety of ¹**【facility】** nursing home¹ residents and staff;

15 (3) hire or discharge any employees, including the administrator or
 16 manager of the ¹**【facility】** nursing home¹ ;

17 (4) receive or expend in a reasonable and prudent manner the
 18 revenues of the ¹**【facility】** nursing home¹ due on the date of the entry
 19 of the order of receivership and to become due under such order;

20 (5) continue the business of the ¹**【facility】** nursing home¹ and the
 21 care of the residents of the ¹**【facility】** nursing home¹ in all its aspects;

22 (6) do all acts necessary or appropriate to conserve the property
 23 and promote the health, safety, and welfare of the residents of the
 24 ¹**【facility】** nursing home¹ ; and

25 (7) exercise such other powers as the receiver deems necessary or
 26 appropriate to implement the court order; and

27 c. Take such other steps and actions as may be available to ensure
 28 continuity of care for, and the safety of, residents of the ¹**【facility】**
 29 nursing home¹ .

30

31 ²**【5.】** 6.² This act shall take effect ¹**【60】** ²**【120¹】** 180² days after
 32 the date of enactment.

33

34

35

36

37 Revises licensure, operational, and reporting requirements for
 38 nursing homes.

ASSEMBLY, No. 4477

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JULY 30, 2020

Sponsored by:

Assemblyman NICHOLAS CHIARAVALLOTI

District 31 (Hudson)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Co-Sponsored by:

Assemblyman Benson, Assemblywomen Speight, Vainieri Huttle, McKnight, Assemblymen Caputo, Mejia, Assemblywomen Reynolds-Jackson, Mosquera and B.DeCroce

SYNOPSIS

Revises licensure, operational, and reporting requirements for long-term care facilities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/26/2020)

A4477 CHIARAVALLOTI, CONAWAY

2

1 AN ACT concerning long-term care facilities, amending P.L.1987,
2 c.322, and supplementing Title 26 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1987, c.322 (C.26:2H-7.2) is amended to
8 read as follows:

9 1. Notwithstanding the provisions of section 7 of P.L.1971,
10 c.136 (C.26:2H-7) to the contrary, a nursing home which proposes
11 to increase the total number of licensed beds contained therein by
12 not more than 10 beds or 10% of its licensed bed capacity,
13 whichever is less, within a period of five years is exempt from the
14 requirement of obtaining a certificate of need if the nursing home is
15 in compliance with all State regulations governing its operations.
16 No transfer of a licensed bed that is added by a nursing home in
17 accordance with the requirements of this section to another nursing
18 home, and no transfer of a licensed bed that is part of an
19 unimplemented certificate of need to another nursing home, shall be
20 authorized except upon application for and receipt of a certificate of
21 need as provided by P.L.1971, c.136 (C.26:2H-1 et seq.).

22 (cf: P.L.1987, c.322, s.1)

23

24 2. (New section) a. The transfer of ownership of a long-term
25 care facility shall not require a certificate of need except when the
26 proposed owner does not satisfy the Department of Health's track
27 record review, including a review of the dashboard data for the
28 facility published pursuant to subsection f. of section 3 of P.L. ,
29 c. (C.) (pending before the Legislature as Senate Bill
30 No.2759 or Assembly Bill No.4478 of 2020/2021) for the preceding
31 three years, if available.

32 b. Prior to transferring ownership of a long-term care facility,
33 the prospective new owner shall submit an application to the Long
34 Term Care Licensing and Certification Program. The application
35 shall include the following items:

36 (1) the transfer of ownership fee established by the department;

37 (2) a cover letter stating the applicant's intent to purchase the
38 long-term care facility, and identification of the facility by name,
39 address, county, and number and type of licensed beds;

40 (3) a description of the proposed transaction, including:

41 (a) identification of the current owners of the long-term care
42 facility;

43 (b) identification of 100 percent of the proposed new owners,
44 including the names and addresses of all principals; and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (c) if applicable, a copy of an organizational chart, including
2 parent corporations and wholly-owned subsidiaries;

3 (4) a copy of the agreement of sale and, if applicable, a copy of
4 any lease and management agreements;

5 (5) a projection of profits and losses for the next three years and
6 a capital budget projection for the next three years; and

7 (6) disclosure of any licensed health care facilities owned,
8 operated, or managed by the proposed owners and principals in any
9 state or territory of the United States or in the District of Columbia
10 in the preceding five years, along with audited financial statements
11 for each such facility for the last three years during which the
12 facility was owned, operated, or managed by the third party entity.
13 If the owners or principals own, operate, or manage facilities
14 located outside New Jersey, the application shall include letters
15 from the regulatory agency in each jurisdiction in which a facility is
16 owned, operated, or managed, verifying that the facility was
17 operated in substantial compliance with the laws of that jurisdiction
18 throughout the preceding five year period or for such time during
19 that period as the third party entity owned, operated, or managed
20 the facility, and that the facility has had no enforcement actions
21 imposed during that period of time.

22 c. Approval of a transfer of ownership of a long-term care
23 facility is contingent upon:

24 (1) a review of the applicant's track record by the department,
25 including a review of the dashboard data published pursuant to
26 subsection f. of section 3 of P.L. , c. (C.) (pending before
27 the Legislature as Senate Bill No.2759 or Assembly Bill No.4478 of
28 2020/2021) for any other facility owned, operated, or managed by
29 the proposed owners and principals in New Jersey, and a
30 determination based on that review that approval of the transfer of
31 ownership will not present a material risk to the health, safety, or
32 welfare of residents of the facility that is the subject of the transfer
33 application;

34 (2) payment of all outstanding Medicaid audit claims and State
35 penalties issued by the department against the current owner, or
36 written verification by the applicant that the applicant will assume
37 responsibility for payment of such audit findings and State
38 penalties; and

39 (3) a criminal history background check of each proposed owner
40 and principal and a determination that no proposed owner or
41 principal has a prior conviction involving fraud or any other
42 criminal offense of a financial nature, or a prior conviction that may
43 bear on the health and safety of residents of a long-term care
44 facility, including, but not limited to, a prior conviction involving
45 abuse, neglect, or exploitation of any person.

46 d. For the purposes of paragraph (3) of subsection c. of this
47 section, the department is authorized to exchange fingerprint data
48 with and receive criminal history record background information

1 from the Division of State Police and the Federal Bureau of
2 Investigation consistent with the provisions of applicable federal
3 and State laws, rules, and regulations. Upon receipt of such
4 notification, the department shall make a determination as to
5 whether transferring all or part of the ownership of a long-term care
6 facility to the applicant would constitute a material risk to the
7 health, safety, or welfare of residents of the facility. An applicant
8 for a transfer of ownership of a long-term care facility who is
9 required to complete a criminal history record background check
10 pursuant to this section shall submit to being fingerprinted in
11 accordance with applicable State and federal laws, rules, and
12 regulations. An applicant shall bear the cost for the criminal history
13 record background check, including all costs of administering and
14 processing the check.

15 e. Transfer of ownership application materials shall published
16 on the department's Internet website and shall be subject to public
17 comment for a period of not less than 30 days following submission
18 and publication of the application. The department may hold a
19 public hearing on the application upon request by the applicant, the
20 current owner, or at least 15 members of the public, in which case
21 the application may not be approved until after the public hearing is
22 completed.

23 f. The department shall not issue final approval for a transfer
24 of ownership of a long-term care facility under this section if the
25 department identifies any unresolved issues or questions concerning
26 any proposed owner or principal identified in the application. The
27 department may issue conditional approval of the transfer pending
28 final resolution of all unresolved issues and questions, subject to
29 appointment of a receiver or temporary manager of the facility at
30 the applicant's expense. The department may enter into a standing
31 contract with a third party entity to provide receivership or
32 temporary management services for the purposes of this subsection.
33 A receiver or temporary manager appointed pursuant to this
34 subsection shall have the authority to:

35 (1) make any repairs, improvements, or expenditures necessary
36 to preserve the health and safety of residents and staff at the facility
37 and to ameliorate any condition presenting a significant risk to the
38 health or safety of residents or staff of the facility, and to direct the
39 method or procedures by which this shall be accomplished;

40 (2) hire employees as needed to maintain mandatory staffing
41 levels;

42 (3) receive or expend in a reasonable and prudent manner the
43 revenues of the facility during the appointment period;

44 (4) continue the business of the facility and the care of the
45 residents of the facility in all aspects;

46 (5) perform all acts necessary or appropriate to conserve the
47 property and promote the health, safety, and welfare of the residents
48 of the facility; and

1 (6) exercise any other powers or authority conferred by the
2 department by regulation or in the appointment agreement.

3 g. When a transfer of ownership application has been reviewed
4 and deemed acceptable, an approval letter from the Long-Term
5 Care Licensing and Certification Program shall be sent to the
6 applicant along with licensure application forms.

7 h. Within five days after the transaction has been completed,
8 the applicant shall submit the following documents to the Long-
9 Term Care Licensing and Certification Program:

10 (1) completed licensure application forms;

11 (2) a notarized letter stating the date on which the transaction
12 occurred; and

13 (3) a copy of a certificate of continuing occupancy from the
14 local township, or a letter from the township verifying a policy of
15 not issuing any such document for changes of ownership.

16 i. The department shall provide for enhanced monitoring of
17 direct care loss ratios reported by a long-term care facility pursuant
18 to subsection c. of section 3 of P.L. , c. (C.) (pending
19 before the Legislature as Senate Bill No.2758 or Assembly Bill
20 No.4482 of 2020/2021) for three years following a transfer of
21 ownership of the long-term care facility.

22 j. For a period of six months following the date a transfer of
23 ownership of a long-term care facility is approved under this
24 section, no other transfer of ownership of that long-term care
25 facility shall be approved.

26 k. No long-term care facility may delegate management of the
27 facility to a third party entity without prior approval by the
28 department. The owners of the facility shall submit to the
29 department for approval:

30 (1) a copy of the management agreement;

31 (2) an organizational chart of the third party entity's proposed
32 management team for the facility;

33 (3) the names and addresses of all owners and principals of the
34 third party entity; and

35 (4) a list of any other licensed health care facilities owned,
36 operated, or managed by the third party entity in any state or
37 territory of the United States or in the District of Columbia for the
38 preceding five years, along with audited financial statements for
39 each such facility for the last three years during which the facility
40 was owned, operated, or managed by the third party entity. If the
41 third party entity owned, operated, or managed facilities located
42 outside New Jersey in the preceding five years, the application shall
43 include letters from the regulatory agency in each jurisdiction in
44 which the third party entity owned, operated, or managed facility in
45 the preceding five years verifying that the facility was operated in
46 substantial compliance with the laws of that jurisdiction throughout
47 the preceding five year period or for such time during that period as
48 the third party entity owned, operated, or managed the facility, and

1 that the facility has had no enforcement actions imposed during that
2 period of time.

3 1. (1) Upon request by the Commissioner of Health and
4 subject to the provisions of P.L.1968, c.266 (C.52:9M-1 et seq.), the
5 State Commission of Investigation shall undertake an investigation
6 of one or more long-term care facilities in the State or the entities
7 owning, operating, or managing one or long-term care facilities in
8 the State, provided that, if the commission determines that the
9 request for an investigation from Commissioner of Health exceeds
10 the commission's capacity to perform such investigations, the
11 commission may advise the Commissioner of Health as to any
12 requests upon which it finds itself unable to proceed. The State
13 Commission of Investigation may, at any time, submit to the
14 Governor, the Commissioners of Health and Human Services, and,
15 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the
16 Legislature, recommendations for administrative or legislative
17 action to improve oversight and transparency in long-term care
18 facilities.

19 (2) Upon approval by the Senate President and the Speaker of
20 the General Assembly, the State Auditor shall undertake an
21 investigation of one or more long-term care facilities in the State or
22 the entities owning, operating, or managing one or long-term care
23 facilities in the State.

24 (3) The State Auditor shall undertake a review of the oversight
25 of long-term care facilities by the Department of Health and the
26 Department of Human Services at least once every three years, with
27 particular focus on compliance with federal inspection
28 requirements, responses to complaints and response times in
29 reviewing complaints, and actions taken to follow up on violations
30 affecting the health, safety, or welfare of residents.

31 m. As used in this section and in section 3 of this act,
32 "principal" means any individual or entity with an interest of five
33 percent or more in an applicant to receive a transfer of ownership of
34 a long-term care facility.

35
36 3. (New section) a. The sale or transfer of the land or other
37 real property on which a long-term care facility is located shall not
38 require a certificate of need except when the proposed owner does
39 not satisfy the Department of Health's track record review,
40 including a review of the dashboard data published pursuant to
41 subsection f. of section 3 of P.L. , c. (C.) (pending before
42 the Legislature as Senate Bill No.2759 or Assembly Bill No.4478 of
43 2020/2021) for the facility for the preceding three years, if
44 available.

45 b. Prior to selling or transferring ownership of the land or other
46 real property on which a long-term care facility is located, the
47 prospective new owner shall submit an application to the Long

1 Term Care Licensing and Certification Program. The application
2 shall include the following items:

3 (1) the sale or transfer of real property fee established by the
4 department;

5 (2) a cover letter stating the applicant's intent to purchase the
6 land or other real property on which a long-term care facility is
7 located, and identification of the facility by name, address, and
8 county;

9 (3) a description of the proposed transaction, including:

10 (a) identification of the current owners of the land or other real
11 property on which a long-term care facility is located;

12 (b) identification of 100 percent of the proposed new owners,
13 including the names and addresses of all principals; and

14 (c) if applicable, a copy of an organizational chart, including
15 parent corporations and wholly-owned subsidiaries;

16 (4) a copy of the agreement of sale or transfer, the proposed
17 terms of the lease, rent, or use agreement with the long-term care
18 facility and, if applicable, a copy of any management agreements;
19 and

20 (5) an attestation that the new owners will lease, rent, or
21 authorize use of the land or other real property by the long-term
22 care facility at a rate that is no more than twice the prevailing fair
23 market rate for the lease, rent, or use of real property by a long-term
24 care facility, as compared with comparable uses in comparable
25 locations and settings at the time the lease, rental, or use agreement
26 is executed.

27 c. Sale and transfer of ownership application materials for the
28 land or real property on which a long-term care facility is located
29 shall be made available on the department's Internet website and
30 shall be subject to public comment for a period of not less than 30
31 days following submission and publication of the application. The
32 department may hold a public hearing on the application upon
33 request by the applicant, the current owner, or at least 15 members
34 of the public, in which case the application may not be approved
35 until after the public hearing is completed.

36 d. The department shall not issue final approval for a sale or
37 transfer of ownership of the land or other real property on which a
38 long-term care facility is located under this section if the
39 department identifies any unresolved issues or questions concerning
40 any proposed owner or principal identified in the application.

41 e. (1) The owner of land or real property on which a long-term
42 care facility is located shall submit to the department a copy of any
43 lease, rent, or use agreement executed by the owner of the land or
44 real property and the long-term care facility on or after the effective
45 date of this act, which agreement shall be submitted to the
46 department no later than 30 days after the date the agreement is
47 executed. The department shall review the terms of the agreement
48 and determine whether the amount charged for the lease, rent, or

1 use of the land or real property exceeds more than twice the fair
2 market value for the lease, rent, or use of land or real property by a
3 long-term care facility, based on an assessment of comparable uses
4 in comparable locations and settings.

5 (2) If the department determines that the terms of the lease, rent,
6 or use agreement for land or real property by a long-term care
7 facility exceed twice the prevailing fair market rate for the lease,
8 rent, or use of real property by a long-term care facility, the
9 department may:

10 (a) require the owner of the land or real property to reimburse
11 the long-term care facility the balance of any payments made for the
12 lease, rent, or use of the land or real property under the current
13 agreement that were in excess of twice the prevailing fair market
14 value for the lease, rent, or use of the real property by the long-term
15 care facility; and

16 (b) require the parties to the agreement to execute a revised
17 agreement under lease, rent, or use terms that do not exceed twice
18 the fair market rate for the lease, rent, or use of land or real property
19 by a long-term care facility.

20 (3) The owner of land or real property on which a long-term
21 care facility is located may request review of the department's
22 determination of the prevailing fair market value of the lease, rent,
23 or use of land or real property by a long-term care facility, which
24 review shall be conducted by the Commissioner of Health. The
25 commissioner's determination upon review shall constitute a final
26 agency decision subject to review by the Appellate Division of the
27 Superior Court.

28

29 4. (New section) The Department of Health shall use the
30 information reported by long-term care facilities pursuant to P.L. ,
31 c. (C.) (pending before the Legislature as Senate Bill
32 No.2759 or Assembly Bill No.4478 of 2020/2021) to identify
33 facilities that may be in acute financial distress or at risk of filing
34 for bankruptcy protection, and develop strategies to assist those
35 facilities in avoiding bankruptcy or the need to close. The
36 department may, as appropriate:

37 a. Provide management support services and resources, as well
38 as any other supports as may be necessary and appropriate to avoid
39 bankruptcy proceedings or cessation of operations;

40 b. Initiate proceedings in a court of competent jurisdiction for
41 the appointment of a receiver for the long-term care facility, which
42 receiver shall have the powers and authorities conferred by the
43 order of receivership, which may include, but shall not be limited
44 to, the authority to:

45 (1) hire any consultants or to undertake any studies of the
46 facility the receiver deems appropriate;

47 (2) make any repairs or improvements as are necessary to ensure
48 the safety of facility residents and staff;

- 1 (3) hire or discharge any employees, including the administrator
2 or manager of the facility;
- 3 (4) receive or expend in a reasonable and prudent manner the
4 revenues of the facility due on the date of the entry of the order of
5 receivership and to become due under such order;
- 6 (5) continue the business of the facility and the care of the
7 residents of the facility in all its aspects;
- 8 (6) do all acts necessary or appropriate to conserve the property
9 and promote the health, safety, and welfare of the residents of the
10 facility; and
- 11 (7) exercise such other powers as the receiver deems necessary
12 or appropriate to implement the court order; and
- 13 c. Take such other steps and actions as may be available to
14 ensure continuity of care for, and the safety of, residents of the
15 facility.

16
17 5. This act shall take effect 60 days after the date of enactment.
18
19

20 STATEMENT
21

22 This bill revises certain requirements concerning the licensure
23 and operations of long-term care facilities.

24 Specifically, the bill revises a provision of current law that
25 allows nursing homes to increase their total bed capacity by a
26 limited amount without the need to obtain a certificate of need, to
27 provide that beds added in this manner may not be transferred to
28 another nursing home without obtaining a certificate of need. The
29 bill additionally prohibits the transfer of beds that are part of an
30 unimplemented certificate of need to another nursing facility
31 without obtaining a certificate of need.

32 With regard to transfers of ownership of long-term care facilities,
33 the bill codifies an existing regulation providing that ownership
34 transfers do not require a certificate of need except when the
35 proposed owner does not satisfy the Department of Health's (DOH)
36 track record review. The bill revises this requirement to provide
37 that the track review will include a review of the dashboard data for
38 the facility for the preceding three years, if available, which
39 dashboard is to be created under another bill pending in the current
40 session, Senate Bill No.2759 and Assembly Bill No.4478.

41 Prior to transferring ownership of a long-term care facility, the
42 prospective new owner will be required to submit an application to
43 the Long Term Care Licensing and Certification Program in the
44 DOH. The application is to specifically include: (1) the transfer of
45 ownership fee established by the DOH; (2) a cover letter stating the
46 applicant's intent to purchase the long-term care facility, and
47 identification of the facility by name, address, county, and number
48 and type of licensed beds; (3) a description of the parties to the

1 proposed transaction, including the current owners of the long-term
2 care facility, the proposed new owners, including the names and
3 addresses of all principals, and if applicable, a copy of an
4 organizational chart, including parent corporations and wholly-
5 owned subsidiaries; (4) a copy of the agreement of sale and, if
6 applicable, a copy of any lease and management agreements; (5) a
7 projection of profits and losses for the next three years and a capital
8 budget projection for the next three years; and (6) disclosure of any
9 licensed health care facilities owned, operated, or managed by the
10 proposed owners and principals in the preceding five years,
11 including verification that any out-of-State facilities were in
12 compliance with the laws of the out-of-State jurisdiction during that
13 period and had no enforcement actions imposed during the past 12
14 months. The applicant will also be required to provide audited
15 financial statements for each facility for the last three years during
16 that period in which the applicant owned, operated, or managed the
17 facility. "Principal" is defined in the bill to mean any individual or
18 entity with an interest of five percent or more in an applicant to
19 receive a transfer of ownership of a long-term care facility.

20 Approval of a transfer of ownership of a long-term care facility
21 will be contingent upon a review of the applicant's track record by
22 the DOH, including a review of the dashboard data for any other
23 facility owned, operated, or managed by the proposed owners and
24 principals in New Jersey, payment or assumption of responsibility
25 of all outstanding Medicaid audit claims and State penalties issued
26 by the DOH against the current owner, and a criminal history
27 background check of each proposed owner and principal and a
28 determination that no proposed owner or principal has a prior
29 conviction involving fraud or other criminal offenses of a financial
30 nature, or a prior conviction that may bear on the health, safety, or
31 welfare of residents of a long-term care facility, including, but not
32 limited to, a prior conviction involving abuse, neglect, or
33 exploitation of any person.

34 Transfer of ownership application materials will be made
35 available on the DOH's Internet website and will be subject to
36 public comment for a period of not less than 30 days following
37 submission and publication of the application. The DOH may hold
38 a public hearing on the application upon request by the applicant,
39 the current owner, or at least 15 members of the public, in which
40 case the application may not be approved until after the public
41 hearing is completed.

42 The DOH may not issue final approval for a transfer of
43 ownership of a long-term care facility if the DOH identifies any
44 unresolved issues or questions concerning any proposed owner or
45 principal identified in the application. The DOH will be authorized
46 to issue conditional approval of the transfer pending final resolution
47 of all unresolved issues and questions, subject to appointment of a
48 receiver or temporary manager of the facility at the applicant's

1 expense. The DOH will be authorized to enter into a standing
2 contract with a third party entity to provide receivership or
3 temporary management services. A receiver or temporary manager
4 will have the authority to: (1) make any necessary repairs,
5 improvements, or expenditures necessary to preserve the health and
6 safety of residents and staff at the facility; (2) hire employees as
7 needed to maintain mandatory staffing levels; (3) receive or expend
8 in a reasonable and prudent manner the revenues of the facility
9 during the appointment period; (4) continue the business of the
10 facility and the care of the residents of the facility in all aspects; (5)
11 perform all acts necessary or appropriate to conserve the property
12 and promote the health, safety, and welfare of the residents of the
13 facility; and (6) exercise any other powers or authority conferred by
14 the DOH by regulation or in the appointment agreement.

15 When a transfer of ownership application has been reviewed and
16 deemed acceptable, an approval letter from the Long-Term Care
17 Licensing and Certification Program will be sent to the applicant
18 along with licensure application forms. Within five days after the
19 transaction has been completed, the applicant will be required to
20 submit to the Long-Term Care Licensing and Certification Program
21 completed licensure application forms, a notarized letter stating the
22 date on which the transaction occurred, and a copy of a certificate
23 of continuing occupancy from the local township, or a letter from
24 the township verifying a policy of not issuing any such document
25 for changes of ownership.

26 The DOH is to provide for enhanced monitoring of direct care
27 loss ratios reported by a long-term care facility pursuant to another
28 bill pending in the current session, Assembly Bill No.4482 and
29 Senate Bill No.2758, for three years following a transfer of
30 ownership of the long-term care facility. For a period of six months
31 following a transfer of ownership of a long-term care facility, no
32 other transfer of ownership of that long-term care facility may be
33 approved.

34 No long-term care facility will be authorized to delegate
35 management of the facility to a third party entity without prior
36 approval by the DOH. The owners of the facility will be required
37 submit to the DOH for approval: a copy of the management
38 agreement; an organizational chart of the third party entity's
39 proposed management team for the facility; the names and
40 addresses of all owners and principals of the third party entity; and
41 a list of any other licensed health care facilities owned, operated, or
42 managed by the third party entity for the preceding five years, along
43 with verification that any out-of-State facilities were operated in
44 substantial compliance with the laws of that jurisdiction and had no
45 enforcement actions imposed throughout the preceding five year
46 period or for such time during that period as the third party entity
47 owned, operated, or managed the facility. The third party entity
48 will also be required to submit audited financial statements for the

1 last three years during that period during which the third party
2 entity owned, managed, or operated the other facility.

3 The bill provides that the DOH may request that the State
4 Commission of Investigation (SCI) or the State Auditor undertake
5 an investigation of one or more long-term care facilities in the State
6 or the entities owning, operating, or managing the facilities. A
7 request for the State Auditor to undertake an investigation will
8 require approval by the Senate President and the Speaker of the
9 General Assembly. A request for the SCI to investigate one or
10 more facilities will be subject to the SCI's capacity to perform the
11 requested investigation. The SCI will also be allowed, at any time,
12 to submit to the Governor, the Commissioners of Health and Human
13 Services, and the Legislature, recommendations for administrative
14 or legislative action to improve oversight and transparency in long-
15 term care facilities.

16 The bill further requires the State Auditor to undertake a review
17 of the oversight of long-term care facilities by the DOH and the
18 Department of Human Services at least once every three years, with
19 particular focus on compliance with federal inspection
20 requirements, responses to complaints and response times in
21 reviewing complaints, and actions taken to follow up on violations
22 affecting the health, safety, or welfare of residents.

23 The bill additionally establishes certain requirements for the sale
24 or transfer of the land or other real property on which a long-term
25 care facility is located. The bill provides that a certificate of need
26 will not be required unless the proposed owner does not satisfy the
27 DOH's track record review, including a review of the dashboard
28 data for the facility for the preceding three years, if available. Prior
29 to selling or transferring ownership of the land or other real
30 property on which a long-term care facility is located, the
31 prospective new owner will be required to submit an application to
32 the Long Term Care Licensing and Certification Program that
33 includes: (1) the sale or transfer of real property fee established by
34 the department; (2) a cover letter stating the applicant's intent to
35 purchase the land or other real property and identification of the
36 facility; (3) a description of the parties to the proposed transaction,
37 including the current owners, the proposed new owners, including
38 the names and addresses of all principals, and if applicable, a copy
39 of an organizational chart, including parent corporations and
40 wholly-owned subsidiaries; (4) a copy of the agreement of sale or
41 transfer, the proposed terms of the lease, rent, or use agreement
42 with the long-term care facility and, if applicable, a copy of any
43 management agreements; and (5) an attestation that the new owners
44 will lease, rent, or authorize use of the land or other real property by
45 the long-term care facility at a rate that is no more than twice the
46 prevailing fair market rate for the lease, rent, or use of real property
47 by a long-term care facility, as compared with comparable uses in

1 comparable locations and settings at the time the lease, rental, or
2 use agreement is executed.

3 Applications for the sale or transfer of land or real property on
4 which a long-term care facility is located will be made available on
5 the DOH's Internet website and will be subject to public comment
6 for a period of at least 30 days. The DOH will be authorized to
7 hold a public hearing on the application upon request by the
8 applicant, the current owner, or at least 15 members of the public,
9 in which case the application may not be approved until after the
10 public hearing is completed.

11 The DOH may not issue final approval for sale or transfer of
12 ownership of the land or other real property on which a long-term
13 care facility is located if the DOH identifies any unresolved issues
14 or questions concerning any proposed owner or principal.

15 The owner of land or real property on which a long-term care
16 facility is located will be required to submit to the DOH a copy of
17 any lease, rent, or use agreement executed by the owner and the
18 long-term care facility within 30 days after the date the agreement
19 is executed. The DOH will review the terms of the agreement and
20 determine whether the amount charged for the lease, rent, or use of
21 the land or real property exceeds more than twice the fair market
22 value for the lease, rent, or use of land or real property by a long-
23 term care facility, based on an assessment of comparable uses in
24 comparable locations and settings. If the DOH determines that the
25 terms of the agreement exceed twice the prevailing fair market rate
26 for the lease, rent, or use of real property by a long-term care
27 facility, the DOH may require the owner to reimburse the long-term
28 care facility for the balance of any payments made that were in
29 excess of twice the prevailing fair market value for comparable
30 agreements, and require the parties to execute a revised agreement
31 under terms that do not exceed twice the fair market rate for the
32 lease, rent, or use of land or real property by a long-term care
33 facility. Owners of land or real property on which a long-term care
34 facility is located may request that the Commissioner of Health
35 review the DOH's determination of the prevailing fair market value.
36 The commissioner's determination upon review will constitute a
37 final agency decision subject to review by the Appellate Division of
38 the Superior Court.

39 The bill additionally requires the DOH to use certain information
40 reported by long-term care facilities to identify facilities that may
41 be in acute financial distress or at risk of filing for bankruptcy
42 protection, and develop strategies to assist those facilities in
43 avoiding bankruptcy or the need to close. Specifically, the DOH
44 will be authorized to provide management services and resources
45 and other supports as are necessary; initiate court proceedings for
46 the appointment of a receiver; take other steps to ensure the
47 continuity of care for, and the safety of, residents of the facility.

1 A receiver appointed under the bill will have the authority to:
2 hire consultants to undertake a study of the facility; make any
3 repairs or improvements as are necessary to ensure the safety of
4 facility residents and staff; hire or discharge any employees
5 including the administrator or manager of the facility; receive or
6 expend in a reasonable and prudent manner the revenues of the
7 facility due on the date of the entry of the order of receivership and
8 to become due under such order; continue the business of the
9 facility and the care of the residents of the facility in all its aspects;
10 do all acts necessary or appropriate to conserve the property and
11 promote the health, safety, and welfare of the residents of the
12 facility; and exercise any other powers as the receiver deems
13 necessary or appropriate to implement the court order establishing
14 the receivership.

ASSEMBLY AGING AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4477

STATE OF NEW JERSEY

DATED: OCTOBER 8, 2020

The Assembly Aging and Senior Services Committee reports favorably Assembly Bill No. 4477.

This bill revises certain requirements concerning the licensure and operations of long-term care facilities.

Specifically, the bill revises a provision of current law that allows nursing homes to increase their total bed capacity by a limited amount without the need to obtain a certificate of need, to provide that beds added in this manner may not be transferred to another nursing home without obtaining a certificate of need. The bill additionally prohibits the transfer of beds that are part of an unimplemented certificate of need to another nursing facility without obtaining a certificate of need.

With regard to transfers of ownership of long-term care facilities, the bill codifies an existing regulation providing that ownership transfers do not require a certificate of need except when the proposed owner does not satisfy the Department of Health's (DOH) track record review. The bill revises this requirement to provide that the track review will include a review of the dashboard data for the facility for the preceding three years, if available, which dashboard is to be created under another bill pending in the current session, Senate Bill No.2759 and Assembly Bill No.4478.

Prior to transferring ownership of a long-term care facility, the prospective new owner will be required to submit an application to the Long Term Care Licensing and Certification Program in the DOH. The application is to specifically include: (1) the transfer of ownership fee established by the DOH; (2) a cover letter stating the applicant's intent to purchase the long-term care facility, and identification of the facility by name, address, county, and number and type of licensed beds; (3) a description of the parties to the proposed transaction, including the current owners of the long-term care facility, the proposed new owners, including the names and addresses of all principals, and if applicable, a copy of an organizational chart, including parent corporations and wholly-owned subsidiaries; (4) a copy of the agreement of sale and, if applicable, a copy of any lease and management agreements; (5) a projection of profits and losses for the next three years and a capital budget projection for the next three years; and (6) disclosure of any licensed health care facilities owned, operated, or managed by the proposed owners and principals in the preceding five years, including verification that any out-of-State

facilities were in compliance with the laws of the out-of-State jurisdiction during that period and had no enforcement actions imposed during the past 12 months. The applicant will also be required to provide audited financial statements for each facility for the last three years during that period in which the applicant owned, operated, or managed the facility. "Principal" is defined in the bill to mean any individual or entity with an interest of five percent or more in an applicant to receive a transfer of ownership of a long-term care facility.

Approval of a transfer of ownership of a long-term care facility will be contingent upon a review of the applicant's track record by the DOH, including a review of the dashboard data for any other facility owned, operated, or managed by the proposed owners and principals in New Jersey, payment or assumption of responsibility of all outstanding Medicaid audit claims and State penalties issued by the DOH against the current owner, and a criminal history background check of each proposed owner and principal and a determination that no proposed owner or principal has a prior conviction involving fraud or other criminal offenses of a financial nature, or a prior conviction that may bear on the health, safety, or welfare of residents of a long-term care facility, including, but not limited to, a prior conviction involving abuse, neglect, or exploitation of any person.

Transfer of ownership application materials will be made available on the DOH's Internet website and will be subject to public comment for a period of not less than 30 days following submission and publication of the application. The DOH may hold a public hearing on the application upon request by the applicant, the current owner, or at least 15 members of the public, in which case the application may not be approved until after the public hearing is completed.

The DOH may not issue final approval for a transfer of ownership of a long-term care facility if the DOH identifies any unresolved issues or questions concerning any proposed owner or principal identified in the application. The DOH will be authorized to issue conditional approval of the transfer pending final resolution of all unresolved issues and questions, subject to appointment of a receiver or temporary manager of the facility at the applicant's expense. The DOH will be authorized to enter into a standing contract with a third party entity to provide receivership or temporary management services. A receiver or temporary manager will have the authority to: (1) make any necessary repairs, improvements, or expenditures necessary to preserve the health and safety of residents and staff at the facility; (2) hire employees as needed to maintain mandatory staffing levels; (3) receive or expend in a reasonable and prudent manner the revenues of the facility during the appointment period; (4) continue the business of the facility and the care of the residents of the facility in all aspects; (5) perform all acts necessary or appropriate to conserve the property and promote the health, safety, and welfare of the residents of the facility;

and (6) exercise any other powers or authority conferred by the DOH by regulation or in the appointment agreement.

When a transfer of ownership application has been reviewed and deemed acceptable, an approval letter from the Long-Term Care Licensing and Certification Program will be sent to the applicant along with licensure application forms. Within five days after the transaction has been completed, the applicant will be required to submit to the Long-Term Care Licensing and Certification Program completed licensure application forms, a notarized letter stating the date on which the transaction occurred, and a copy of a certificate of continuing occupancy from the local township, or a letter from the township verifying a policy of not issuing any such document for changes of ownership.

The DOH is to provide for enhanced monitoring of direct care loss ratios reported by a long-term care facility pursuant to another bill pending in the current session, Assembly Bill No.4482 and Senate Bill No.2758, for three years following a transfer of ownership of the long-term care facility. For a period of six months following a transfer of ownership of a long-term care facility, no other transfer of ownership of that long-term care facility may be approved.

No long-term care facility will be authorized to delegate management of the facility to a third party entity without prior approval by the DOH. The owners of the facility will be required to submit to the DOH for approval: a copy of the management agreement; an organizational chart of the third party entity's proposed management team for the facility; the names and addresses of all owners and principals of the third party entity; and a list of any other licensed health care facilities owned, operated, or managed by the third party entity for the preceding five years, along with verification that any out-of-State facilities were operated in substantial compliance with the laws of that jurisdiction and had no enforcement actions imposed throughout the preceding five year period or for such time during that period as the third party entity owned, operated, or managed the facility. The third party entity will also be required to submit audited financial statements for the last three years during that period which the third party entity owned, managed, or operated the other facility.

The bill provides that the DOH may request that the State Commission of Investigation (SCI) or the State Auditor undertake an investigation of one or more long-term care facilities in the State or the entities owning, operating, or managing the facilities. A request for the State Auditor to undertake an investigation will require approval by the Senate President and the Speaker of the General Assembly. A request for the SCI to investigate one or more facilities will be subject to the SCI's capacity to perform the requested investigation. The SCI will also be allowed, at any time, to submit to the Governor, the Commissioners of Health and Human Services, and the Legislature,

recommendations for administrative or legislative action to improve oversight and transparency in long-term care facilities.

The bill further requires the State Auditor to undertake a review of the oversight of long-term care facilities by the DOH and the Department of Human Services at least once every three years, with particular focus on compliance with federal inspection requirements, responses to complaints and response times in reviewing complaints, and actions taken to follow up on violations affecting the health, safety, or welfare of residents.

The bill additionally establishes certain requirements for the sale or transfer of the land or other real property on which a long-term care facility is located. The bill provides that a certificate of need will not be required unless the proposed owner does not satisfy the DOH's track record review, including a review of the dashboard data for the facility for the preceding three years, if available. Prior to selling or transferring ownership of the land or other real property on which a long-term care facility is located, the prospective new owner will be required to submit an application to the Long Term Care Licensing and Certification Program that includes: (1) the sale or transfer of real property fee established by the department; (2) a cover letter stating the applicant's intent to purchase the land or other real property and identification of the facility; (3) a description of the parties to the proposed transaction, including the current owners, the proposed new owners, including the names and addresses of all principals, and if applicable, a copy of an organizational chart, including parent corporations and wholly-owned subsidiaries; (4) a copy of the agreement of sale or transfer, the proposed terms of the lease, rent, or use agreement with the long-term care facility and, if applicable, a copy of any management agreements; and (5) an attestation that the new owners will lease, rent, or authorize use of the land or other real property by the long-term care facility at a rate that is no more than twice the prevailing fair market rate for the lease, rent, or use of real property by a long-term care facility, as compared with comparable uses in comparable locations and settings at the time the lease, rental, or use agreement is executed.

Applications for the sale or transfer of land or real property on which a long-term care facility is located will be made available on the DOH's Internet website and will be subject to public comment for a period of at least 30 days. The DOH will be authorized to hold a public hearing on the application upon request by the applicant, the current owner, or at least 15 members of the public, in which case the application may not be approved until after the public hearing is completed.

The DOH may not issue final approval for sale or transfer of ownership of the land or other real property on which a long-term care facility is located if the DOH identifies any unresolved issues or questions concerning any proposed owner or principal.

The owner of land or real property on which a long-term care facility is located will be required to submit to the DOH a copy of any lease, rent, or use agreement executed by the owner and the long-term care facility within 30 days after the date the agreement is executed. The DOH will review the terms of the agreement and determine whether the amount charged for the lease, rent, or use of the land or real property exceeds more than twice the fair market value for the lease, rent, or use of land or real property by a long-term care facility, based on an assessment of comparable uses in comparable locations and settings. If the DOH determines that the terms of the agreement exceed twice the prevailing fair market rate for the lease, rent, or use of real property by a long-term care facility, the DOH may require the owner to reimburse the long-term care facility for the balance of any payments made that were in excess of twice the prevailing fair market value for comparable agreements, and require the parties to execute a revised agreement under terms that do not exceed twice the fair market rate for the lease, rent, or use of land or real property by a long-term care facility. Owners of land or real property on which a long-term care facility is located may request that the Commissioner of Health review the DOH's determination of the prevailing fair market value. The commissioner's determination upon review will constitute a final agency decision subject to review by the Appellate Division of the Superior Court.

The bill additionally requires the DOH to use certain information reported by long-term care facilities to identify facilities that may be in acute financial distress or at risk of filing for bankruptcy protection, and develop strategies to assist those facilities in avoiding bankruptcy or the need to close. Specifically, the DOH will be authorized to provide management services and resources and other supports as are necessary; initiate court proceedings for the appointment of a receiver; take other steps to ensure the continuity of care for, and the safety of, residents of the facility.

A receiver appointed under the bill will have the authority to: hire consultants to undertake a study of the facility; make any repairs or improvements as are necessary to ensure the safety of facility residents and staff; hire or discharge any employees including the administrator or manager of the facility; receive or expend in a reasonable and prudent manner the revenues of the facility due on the date of the entry of the order of receivership and to become due under such order; continue the business of the facility and the care of the residents of the facility in all its aspects; do all acts necessary or appropriate to conserve the property and promote the health, safety, and welfare of the residents of the facility; and exercise any other powers as the receiver deems necessary or appropriate to implement the court order establishing the receivership.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4477

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 26, 2020

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4477, with committee amendments.

As amended by the committee, this bill revises certain requirements concerning the licensure and operations of nursing homes.

Specifically, the bill as amended revises a provision of current law that allows nursing homes to increase their total bed capacity by a limited amount without the need to obtain a certificate of need, to provide that beds added in this manner may not be transferred to another nursing home, and a nursing home that has removed beds from its license within the preceding five years will not be eligible to add beds in this manner. The bill additionally prohibits the transfer of beds that are part of an unimplemented certificate of need to another nursing facility.

As amended, the bill requires that, prior to transferring ownership of a nursing home, the prospective new owner will be required to submit an application to the Department of Health (DOH). The application is to specifically include: (1) the transfer of ownership fee established by the DOH; (2) a cover letter stating the applicant's intent to purchase the nursing home, and identification of the nursing home by name, address, county, and number and type of licensed beds; (3) a description of the parties to the proposed transaction, including the current owners of the nursing home, the proposed new owners, including the names and addresses of all principals and interested parties, and if applicable, a copy of an organizational chart, including parent corporations and wholly-owned subsidiaries; (4) a copy of the agreement of sale and, if applicable, a copy of any lease and management agreements; (5) a projection of profits and losses for the next three years and a capital budget projection for the next three years; and (6) disclosure of any licensed health care facilities owned, operated, or managed by the proposed owners and principals in the preceding three years, including disclosure of any enforcement actions imposed during the past three years against any facility owned, operated, or managed by the applicant in any jurisdiction. The applicant will also be required to provide owner-certified financial statements for each facility for the last three years during that period in

which the applicant owned, operated, or managed the facility. Applicants will have the option to prepare a summary of the application materials that can be published on the DOH's website in lieu of the application itself.

"Principal" is defined in the bill to mean any individual or entity with an interest of 10 percent or more in an applicant to receive a transfer of ownership of a nursing home. "Interested party" is defined in the bill to mean any individual or entity with an interest of one percent or more but less than 10 percent in an applicant to receive a transfer of ownership of a nursing home.

The bill, as amended, provides that application materials may not be used in any adverse administrative or disciplinary action against an applicant.

Approval of a transfer of ownership of a nursing home will be contingent upon a review of the applicant's history of disciplinary actions assessed by the DOH for any other facility owned, operated, or managed by the proposed owners and principals in New Jersey, payment or assumption of responsibility of all outstanding and issued Medicaid audit claims and State penalties issued by the DOH against the current owner, unless the claims remain under appeal, in which case the applicant will be required to submit written verification that either the applicant or the current owners of the nursing home will assume responsibility for payment of any audit recoveries and State penalties at the conclusion of the appeal. Approval of the application will also be contingent on a criminal history background check of each proposed owner and principal and a determination that no proposed owner or principal has a prior conviction involving fraud or other criminal offenses of a financial nature, or a prior conviction that may bear on the health, safety, or welfare of residents of a long-term care facility, including, but not limited to, a prior conviction involving abuse, neglect, or exploitation of any person. The applicant will be responsible for assuming the cost of the criminal history record background check.

The bill, as amended, requires copies of the application, with certain proprietary and personal identifying information redacted, to be posted on the DOH's Internet website. Alternatively, a summary prepared by the applicant may be posted on the DOH's website, provided the summary identifies the names of the proposed owners and principals and includes any other information as may be required by the DOH.

Applications will be subject to public comment for a period of not less than 30 days, which comment period is to be opened within 30 days after the date the application is submitted to the DOH. The DOH will be required to establish a process for acknowledging receipt of public comments. Nursing homes will be required to hold a public hearing on the application and provide public notice of the hearing at least seven days in advance, which notice will include posting notice

on the Internet websites of the DOH, the nursing home, and the applicant, and publishing notice in at least one newspaper in each county, if any newspapers are published therein. The application may not be approved until the public hearing is held. The facility will be required to invite the Commissioner of Health and the Attorney General, or their representatives, to attend the hearing.

The bill as amended prohibits the DOH from issuing final approval for a transfer of ownership of a nursing home if the DOH identifies any unresolved issues or questions concerning any proposed owner or principal identified in the application. The DOH will have the authority to issue conditional approval of a transfer pending final resolution of all unresolved issues and questions, subject to appointment of a receiver or temporary manager of the facility at the applicant's expense.

When a transfer of ownership application has been reviewed and deemed acceptable, the DOH will send the applicant an approval letter. Within five days after the transaction has been completed, the applicant will be required to submit to the DOH certification of closing from an attorney or a notarized letter from the applicant stating the date on which the transaction occurred, along with an executed bill of sale or assignment. To facilitate the timely transfer of Medicare and Medicaid provider numbers, the DOH will be required to issue the new license to the applicant no later than 30 days after the date the notice is received by the DOH.

No nursing home will be authorized to delegate substantial management control of the facility to a third party entity without providing prior notice to the DOH. The owners of the facility will be required to submit with the notice: a copy of the management agreement; an organizational chart of the third party entity's proposed management team for the nursing home; the names and addresses of all owners, principals, and interested parties of the third party entity; and a list of any other licensed health care facilities owned, operated, or managed by the third party entity for the preceding three years, along with disclosure of any enforcement actions imposed during that period against any facility owned, operated, or managed by the applicant during that period. The third party entity will also be required to submit owner-certified financial statements for the last three years during that period which the third party entity owned, managed, or operated the other facility.

The bill provides that the DOH may request that the State Commission of Investigation (SCI) or the State Auditor undertake an investigation of one or more nursing homes in the State or the entities owning, operating, or managing the nursing homes. A request for the State Auditor to undertake an investigation will require approval by the Senate President and the Speaker of the General Assembly. A request for the SCI to investigate one or more nursing homes will be subject to the SCI's capacity to perform the requested investigation.

The SCI will also be allowed, at any time, to submit to the Governor, the Commissioners of Health and Human Services, and the Legislature, recommendations for administrative or legislative action to improve oversight and transparency in nursing homes.

The bill further requires the State Auditor to undertake a review of the oversight of nursing homes by the DOH and the Department of Human Services at least once every three years, with particular focus on compliance with federal inspection requirements, responses to complaints and response times in reviewing complaints, and actions taken to follow up on violations affecting the health, safety, or welfare of residents.

The bill, as amended, additionally establishes certain requirements for the sale or transfer of the land or other real property on which a nursing home is located. Prior to selling or transferring ownership of the land or other real property on which a nursing home is located, the prospective new owner will be required to submit an application to the DOH and the Department of Human Services (DHS) that includes: (1) the sale or transfer of real property fee established by the department; (2) a cover letter stating the applicant's intent to purchase the land or other real property and identification of the nursing home; (3) a description of the parties to the proposed transaction, including the current owners, the proposed new owners, including the names and addresses of all principals and interested parties, and if applicable, a copy of an organizational chart, including parent corporations and wholly-owned subsidiaries; (4) a copy of the agreement of sale or transfer, the proposed terms of the lease, rent, or use agreement with the nursing home and, if applicable, a copy of any management agreements; and (5) an attestation that the new owners will lease, rent, or authorize use of the land or other real property by the nursing home at a rate that is consistent with the fair market value for the lease, rent, or use of similar facilities in the same market area. A summary of the notice will be posted on the DOH's website.

The DHS will be required to utilize the direct care ratios reported pursuant to subsection c. of section 3 of P.L.2020, c.89 (C.30:4D-7cc) to determine the average rates for the lease, rent, or use of land or other real property by nursing homes in the State, which average rates are to be adjusted in each market area to account for factors that affect the average lease, rent, or use rates in that market area. The DHS will have the authority to: (1) establish caps on the maximum lease, rent, or use rates that can be charged to a nursing home for the use of real property; (2) determine whether a nursing home is paying a lease, rent, or use rate for land or other real property that significantly exceeds the fair market value for similar facilities in the same market area; and (3) require that any rate that significantly exceeds the fair market value for the lease, rent, or use of similar facilities in that market area be reduced, for the duration of the current lease, rent, or use agreement, to

match the average lease, rent, or use rate for similar facilities in the same market area.

The bill additionally requires the DHS to use direct care ratios to assist the DOH to identify nursing homes that may be in acute financial distress or at risk of filing for bankruptcy protection. The DOH will be required to develop strategies to assist facilities in financial distress to avoid bankruptcy or the need to close. Specifically, the DOH will be authorized to provide management services and resources and other supports as are necessary; initiate court proceedings for the appointment of a receiver; and take other steps to ensure the continuity of care for, and the safety of, residents of the nursing home.

A receiver appointed under the bill will have the authority to: hire consultants to undertake a study of the nursing home; make any repairs or improvements as are necessary to ensure the safety of nursing home residents and staff; hire or discharge any employees including the administrator or manager of the nursing home; receive or expend in a reasonable and prudent manner the revenues of the nursing home due on the date of the entry of the order of receivership and to become due under such order; continue the business of the nursing home and the care of the residents of the nursing home in all its aspects; do all acts necessary or appropriate to conserve the property and promote the health, safety, and welfare of the residents of the nursing home; and exercise any other powers as the receiver deems necessary or appropriate to implement the court order establishing the receivership.

COMMITTEE AMENDMENTS:

The committee amendments revise the scope of the bill to make it applicable to nursing homes only, rather than all long-term care facilities. The amendments update the title and synopsis of the bill to reflect this change.

The committee amendments revise the new restrictions on transferring beds added under an existing exception to the certificate of need requirement to provide that beds added under that provision, as well as beds that are part of an unimplemented certificate of need, may not be transferred to any other nursing home. The amendments further provide that a nursing home that has removed beds from its license within the preceding five years will not be eligible for the exception.

The committee amendments remove language referring to the DOH's track record review of applicants for transfer ownership of a nursing home and for transfer of the land or other real property on which a nursing home is located, as well as references to the Long Term Care Licensing and Certification Program, which language would have codified an outdated regulation and referred to a program that does not currently exist. In lieu of track record review, the DOH will review the applicant's history of disciplinary actions assessed in

connection with other facilities the applicant owns, operates, or manages in the State.

The committee amendments require the application materials to include the names and addresses of all principals and interested parties in the nursing home, but that the additional requirements that applicants complete a criminal history record background check, submit certain materials, and make certain disclosures, will only apply to principals, not interested parties. The bill revises the definition of “principal” to mean anyone with more than a 10 percent interest in an applicant for transfer of a nursing home, and add a new definition of “interested party” to mean an entity with an interest in the applicant of one percent or more but less than 10 percent.

The committee amendments revise a requirement for applicants for transfers of ownership of a nursing home to obtain letters from other jurisdictions in which they own, operate, or manage a long-term care facility verifying that the facility was operated in compliance with the laws of that other jurisdiction, to instead require the applicant to disclose any enforcement actions taken against a facility owned, operated, or managed in another jurisdiction. The amendments reduce the look-back period concerning facilities owned, operated, or managed by the applicant in other jurisdictions from five years to three years.

The committee amendments add language providing that application materials for the transfer of ownership of a nursing home may not be used in administrative actions against the applicant.

The committee amendments revise the criminal history record background check requirements to include language requiring the Division of State Police to provide the DOH with notice in the event that an individual who completed a criminal history record background check is subsequently convicted of a crime or offense in the State.

The committee amendments revise the requirements for transfer of ownership of a nursing home to require that the DOH redact certain personal and proprietary information from the application before posting it on the DOH’s Internet website. Alternatively, applicants will have the option to prepare a summary of the application that will be posted on the DOH’s Internet website.

The committee amendments revise the requirement for the DOH to hold a public hearing on the application, to instead provide that the nursing home that is the subject of the transfer of ownership application will be required to hold the public hearing no earlier than 30 days after the date the application is received by the DOH, and invite the Attorney General and the Commissioner of Health, or their representatives, to attend the hearing. The bill retains language providing the application may not be approved until after the public hearing is completed.

The committee amendments remove provisions concerning the specific authorities that would be granted to a receiver or temporary manager of a nursing home during a period of conditional approval.

The committee amendments remove a requirement for an approved applicant to submit to the DOH completed licensure application forms and certificates of continuing occupancy, and to instead require the applicant to submit certain documents certifying the date of the transaction along with an executed bill of sale or assignment. The amendments require the DOH to issue the new license to the applicant no later than 30 days after the date the notice is received.

The committee amendments remove a provision requiring enhanced monitoring of a nursing home's direct care loss ratio following a transfer of ownership and a six-month prohibition against subsequent transfers of ownership.

The committee amendments remove a requirement that the DOH approve management delegation agreements and instead require the nursing home to provide notice to the DOH of the delegation prior to delegating substantial management control. The amendments provide that, in lieu of requiring compliance verification letters from other jurisdictions in which the third party management entity owns, operates, or manages facilities, the third party entity is to disclose any enforcement actions against a facility owned, operated, or managed by the entity in any jurisdiction. The amendments revise the look-back period for facilities owned, operated, or managed by a third party entity in other jurisdictions from five years to three years.

The committee amendments revise the requirements for transfers of the land or other real property on which a nursing home is located to remove a requirement for the entity acquiring the land or other real property to submit an application to the DOH. Instead, the prospective owner will be required to provide the DOH and the DHS with prior notice of the transaction, which will be published on the DOH's Internet website. The notice will include the same information that would have been required under the application process.

The committee amendments remove provisions that would have allowed the DOH to review lease, rent, and use rates charged to nursing homes and order adjustments in those rates when they exceed twice the fair market value for comparable land use agreements. The amendments instead require the DHS to review the direct care ratios for nursing homes to determine the average fair market lease, rent, and use rates for nursing homes, and grant the DHS the authority to cap lease, rent, and use rates, and to reduce the amount of a lease, rent, or use agreement that significantly exceeds the fair market rate for similar facilities in the same market area.

The committee amendments additionally revise the requirement for the DOH to monitor nursing homes to identify those that may be in financial distress or at risk of filing for bankruptcy protection to instead require the DHS to review direct care ratios to assist the DOH

in identifying those facilities. The actions the DOH can take to prevent a bankruptcy filing or facility closure will remain unchanged.

The committee amendments revise the effective date of the bill from 60 days after the date of enactment to 120 days after the date of enactment.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the Department of Health (DOH) will incur an indeterminate amount of costs under the bill, as amended, due to increased oversight and enforcement activities related to the transfer of ownership of nursing home facilities and the sale or transfer of land or real property on which nursing home facilities are located. Currently, the department's Certificate of Need and Licensing unit enforces the State standards for licensure on health care facilities, and the Health Facility Survey and Field Operations unit enforces State licensing regulations. As such, to the extent that the provisions of the bill overlap with these unit's current duties and that the units can use existing resources to fulfill new duties required under the bill, the cost will be minimized. For example, this bill codifies existing regulations that require a prospective new owner to submit an application prior to transferring ownership of a nursing home. As such, the cost of this provision will likely be minimal. However, there is no existing requirement regarding the submission of an application for the sale or transfer of land or real property on which nursing home facilities are located. While the department may be able to use the existing infrastructure to process these applications, staff costs may be incurred due to the increased volume of applications.

Certain components of the bill, outside of the mission the department, are likely to increase State expenditures. For example, it is likely that the department may need to hire staff with expertise in real estate market valuation to determine the average fair market value of lease, rent, or use of land agreements, adjusted for local market factors, and to establish a cap on the amount that may be paid by a nursing home for the lease, rent, or use of land or other real property by the nursing home, as required under the bill.

These expenses will be offset by revenue generated under the bill due to application fees imposed upon prospective new owners. Currently entities that apply for DOH for approval of ownership transfer pay a fee of \$2,500 plus \$15.00 per bed, which helps defray the costs of the current level of document review. This fee may also offset the additional requirements of the bill, to the extent that the department increases the fee following the adoption of the bill. Under the bill, applicants for approval of the sale and transfer of land or real property would be charged a newly-established fee which, if set at appropriate level, may also offset the additional cost incurred by the department.

As the bill's provisions will result in an increased number of surveys conducted by the State Commissioner of Investigations and an increased number of agency audits conducted by the Office of the State Auditor, the OLS also estimates that additional State resources will be expended on salaries, benefits, and travel within the State.

Finally, the OLS notes that nursing homes operated by the Department of Military and Veterans Affairs and certain county governments would incur potential costs to comply with the licensure, operating, and reporting requirements mandated under this bill.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 4477

with Assembly Floor Amendments
(Proposed by Assemblyman CHIARAVALLOTI)

ADOPTED: MARCH 1, 2021

These Assembly amendments provide that licensed nursing home beds that are added pursuant to a current exemption from certificate of need requirements or that are part of an unimplemented certificate of need may be transferred to another nursing home, but will be subject to the certificate of need approval process.

The amendments revise the requirements to apply for transfers of ownership of a nursing home to replace a standard that applied to all transfers of ownership, to create four levels of review based on whether the applicant has ever owned or operated a licensed health care facility in New Jersey and whether the transfer would pertain to a controlling or a non-controlling interest in the nursing home. The amendments provide that only certain applicants will be subject to a criminal history record background check and required to hold a public hearing on the application. The amendments further revise the look-back period concerning other health care facilities owned or operated by the applicant, which varies in duration and scope based on the level of review applicable to the application.

The amendments remove a provision that would have allowed the Department of Health (DOH) to grant conditional approval of an application, and add a requirement that the DOH complete review of all applications within 120 days after the date the application is submitted.

The amendments revise a provision concerning approval of a transfer of ownership application to make clear that applications will not be automatically approved by changing “when” to “if.”

The amendments remove a provision that would have required the State Auditor to undertake an investigation of one or more nursing homes if approved by both the Senate President and the Speaker of the General Assembly.

The amendments revise the definitions of “interested party” and “principal” to make the term “interested party” applicable to any person or entity with an ownership interest of one percent or more but less than five percent, and the term “principal” to any person or entity with an ownership interest of five percent or more.

The amendments revise a requirement for the Department of Human Services (DHS) to evaluate nursing home lease, rent, and land use agreements to determine whether the nursing home is being charged an excessive amount of rent, to instead require nursing homes to report to the Department of Health (DOH) their lease, rent, or land

use rates, or the average rates, which reported rates the DOH will post on its Internet website.

The amendments revise a requirement that the DHS utilize direct care ratios to help the DOH to identify nursing homes in financial distress or at risk of filing for bankruptcy to instead require nursing homes to report to the DOH any time they miss certain types of payments, including debt service, rent, payroll, or payroll taxes. The DOH is to undertake the task of identifying nursing homes in financial distress, with the assistance of the DHS, on an as-needed basis.

The amendments add a requirement that, if the DOH provides management support services and resources to a nursing home, those services and resources will be provided at the nursing home's expense. The amendments add language that will alternatively allow the DOH to direct a nursing home to management support services and resources.

The amendments revise a provision allowing the DOH to initiate receivership proceedings, to provide that the DOH may initiate the proceedings in situations where the nursing home does not take sufficient and timely action to avoid an impending bankruptcy or closure, and the DOH finds the bankruptcy or closure would have a significant adverse effect on the health, safety, and welfare of the residents of the nursing home or the DOH determines that bankruptcy or closure would leave the area in which the nursing home is located lacking sufficient nursing home services.

The amendments revise the effective date of the bill from 120 days after the date of enactment to 180 days after the date of enactment.

The amendments make a number of technical changes, including revising a reference to "public records" to read "government record" to reflect current statutory usage and making certain changes involving capitalization.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 4477

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: NOVEMBER 2, 2020

SUMMARY

- Synopsis:** Revises licensure, operational, and reporting requirements for nursing homes.
- Type of Impact:** Increase in annual State expenditures and revenues.
- Agencies Affected:** Department of Health; Department of Human Services; State Commission of Investigation; Office of the State Auditor

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that the Department of Health (DOH) will incur an indeterminate amount of annual costs under the bill due to increased oversight and enforcement activities related to the transfer of ownership of nursing home facilities and the sale or transfer of land or real property on which nursing home facilities are located. Annual revenues generated from application fees imposed upon prospective new owners, as established by the department following the adoption of the bill, are indeterminate, and the OLS cannot ascertain the extent to which these fees will offset the oversight and enforcement requirements of the bill.
- The OLS concludes that the Department of Human Services (DHS) will incur costs in hiring at least one full-time equivalent staff person to make certain determinations regarding the fair market value of land agreements, as required under the bill. As real estate market analysis is outside of the department's purview, it is unlikely that existing department staff will have the qualifications to fulfill this provision.

- As the bill's provisions will result in an increased number of surveys conducted by the State Commission of Investigation (SCI) and an increased number of agency audits conducted by the Office of the State Auditor (OSA), the OLS estimates that these entities will expend additional State funds on salaries, benefits, and travel within the State.

BILL DESCRIPTION

This bill revises certain requirements concerning the licensure and operations of nursing homes. First, the bill revises a provision of current law regarding the increase of a nursing home's total bed capacity, by a limited amount, without the need to obtain a certificate of need.

Second, the bill requires, prior to transferring ownership of a nursing home, the prospective new owner to submit an application to the DOH, which is to include a fee established by the department. The applicant will also be required to provide certain certified financial statements for each facility that the applicant has owned, operated, or managed. The bill requires copies of the application, or a summary of the application prepared by the applicant, to be posted on the DOH's website.

Approval of a transfer of ownership will be contingent upon: a review of the applicant's history of disciplinary actions assessed by the DOH; payment or assumption of responsibility of all outstanding and issued claims and penalties issued by the DOH; and a criminal history background check of each proposed owner and principal, at the applicant's expense.

Applications will be subject to public comment for a period of not less than thirty days. The DOH will be required to establish a process for acknowledging receipt of public comments. Nursing homes will be required to hold a public hearing on the application and provide public notice of the hearing at least seven days in advance.

The DOH will have the authority to issue conditional approval of a transfer pending final resolution of all unresolved issues, subject to appointment of a receiver or temporary manager of the facility, at the applicant's expense. Upon approval of the transfer, the DOH will send the applicant a letter, and the applicant will subsequently be required to submit to the DOH documentation of the transaction. The DOH will be required to issue the new license to the applicant no later than thirty days after the date the documentation is received. No nursing home owner will be authorized to delegate substantial management control of the facility to a third party entity without providing prior notice to the DOH.

Third, the bill establishes certain requirements for the sale or transfer of real property on which a nursing home is located. Prior to the sale or transfer of ownership of the real property, the prospective new owner will be required to submit an application to the DOH and the DHS, which is to include a fee established by the DOH. A summary of the notice will be posted on the DOH's website.

The DHS will be required to utilize information reported by nursing homes recording direct care ratios, as required under existing law, to determine the average rates, as adjusted in each market area to account for applicable factors, for the lease, rent, or use of real property by a nursing home. The DHS will have the authority to: (1) establish rate caps charged to a nursing home for the use of real property; (2) determine whether a nursing home is paying a rate that significantly exceeds the fair market value; and (3) require that any rate that significantly exceeds the fair market value be reduced to match the average rate for similar facilities in the same market area.

The bill additionally requires the DHS to use the direct care ratio information to assist the DOH in identifying nursing homes that may be in acute financial distress. The DOH will be required to develop strategies to assist facilities in financial distress with avoiding bankruptcy or closure, such

as: providing management services and resources; initiating court proceedings for the appointment of a receiver; and taking other steps to ensure the continuity of care for, and the safety of, residents.

Finally, the bill provides that the DOH may request that the SCI, subject to the SCI's capacity to perform the requested investigation, or the State Auditor undertake an investigation of a nursing home or the entities owning, operating, or managing nursing homes. The bill further requires the State Auditor to undertake a review of the oversight of nursing homes by the DOH and the DHS at least once every three years.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the DOH will incur an indeterminate amount of annual costs under the bill due to increased oversight and enforcement activities related to the transfer of ownership of nursing home facilities and the sale or transfer of land or real property on which nursing home facilities are located. Currently, the department's Certificate of Need and Licensing unit enforces the State standards for licensure of health care facilities, and the Health Facility Survey and Field Operations unit enforces State licensing regulations. As such, to the extent that the provisions of the bill overlap with these units' current duties and the department can use existing resources within these units to fulfill the new requirements under the bill, costs will be minimized.

For example, this bill codifies existing regulations that require a prospective new owner to submit an application prior to transferring ownership of a nursing home. Generally, the components of the application under the bill are identical to the components under existing regulation, except that under the bill the applicant is to include a three-year projection of profits and losses and a capital budget. As such, the OLS assumes the cost incurred by the department to process such applications will be minimal. However, there is no similar regulatory requirement regarding an application for the sale or transfer of land or real property on which nursing home facilities are located. Therefore, while the department may be able to use its current infrastructure to process these applications, costs may be incurred to hire additional staff to process the increased volume of applications.

Under the bill, the DOH is to establish application fees to be imposed on new owners, which will result in additional annual State revenues. However, the fee schedule is not known at this time so the amount of revenue to be raised is indeterminate, and the OLS cannot ascertain the extent to which the transfer of ownership fee and the sale or transfer of real property fee will offset the oversight and enforcement requirements of the bill. Currently, entities that apply for approval of ownership transfer pay a fee of \$2,500 plus \$15 per bed, while no fee is collected regarding the approval of the sale and transfer of real property.

The OLS also concludes that the DHS will incur costs in hiring staff to make certain determinations regarding the fair market value of land agreements, as required under the bill. Under the bill, the department is to adjust the value for local market factors and is authorized to establish a rate cap. As real estate market analysis is outside of the department's purview, it is unlikely that existing department staff will have the qualifications to fulfill this provision. The OLS estimates that the department will need to hire, at a minimum, one full-time equivalent employee, resulting in a State cost of \$120,000 annually for salary, equipment, and fringe benefits,

to fulfill this provision. The OLS assumes that all other expenses of the bill incurred by the DHS, such as assisting the DOH in identifying nursing homes that may be under financial distress, will be absorbed into the department's existing operating budget as such tasks can be achieved under the DHS's existing review of the direct care ratio information.

As the bill's provisions will result in an increased number of surveys conducted by the SCI and an increased number of agency audits conducted by the OSA, the OLS estimates that these entities will expend additional State funds on salaries, benefits, and travel within the State. The OLS cannot predict the magnitude of this increase, and therefore the cost of this provision, as certain surveys are to be conducted at the request of the DOH.

Section: Human Services
Analyst: Schmidt, Sarah
Senior Research Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4477

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: MARCH 26, 2021

SUMMARY

- Synopsis:** Revises licensure, operational, and reporting requirements for nursing homes.
- Type of Impact:** Increase in annual State expenditures and revenues.
- Agencies Affected:** Department of Health; Department of Human Services; State Commission of Investigation; Office of the State Auditor

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that the Department of Health (DOH) will incur an indeterminate amount of annual costs under the bill due to increased oversight and enforcement activities related to the transfer of ownership of nursing home facilities and the sale or transfer of land or real property on which nursing home facilities are located. The department will also experience indeterminate annual cost increases to identify nursing home facilities that may be in acute financial distress or at risk of filing for bankruptcy. Annual revenues generated from application fees imposed upon prospective new owners, as established by the department following the adoption of the bill, are indeterminate, and the OLS cannot ascertain the extent to which these fees will offset the costs of the bill.
- As the bill's provisions will result in an increased number of surveys conducted by the State Commission of Investigation (SCI) and an increased number of agency audits conducted by the Office of the State Auditor, the OLS estimates that these entities will expend additional State funds on salaries, benefits, and travel within the State.

BILL DESCRIPTION

This bill revises certain requirements concerning the licensure and operations of nursing homes. First, the bill revises a provision of current law that allows nursing homes to increase their total bed capacity by a limited amount without the need to obtain a certificate of need. The bill additionally prohibits the transfer of beds that are part of an unimplemented certificate of need to another nursing facility without an approved certificate of need.

Second, the bill requires that, prior to transferring ownership of a nursing home, the prospective new owner is to submit an application to the DOH, the requirements of which will vary depending on whether the applicant has ever owned or operated a nursing home in New Jersey and whether the application is for transfer of a controlling or non-controlling interest in the nursing home. Among other documentation, all applications are to include the transfer of ownership fee established by the DOH.

For applicants required to complete a criminal history record background check, the DOH will be required to make a determination as to whether transferring all or part of the ownership of a nursing home to the applicant would constitute a material risk to the health, safety, or welfare of residents of the nursing home. Approval of any application for transfer of ownership of a nursing home will be contingent upon a review of the applicant's history of disciplinary actions assessed by the DOH. The bill requires copies of the application to be posted on the DOH's website. All applications will be subject to public comment for a period of not less than 30 days. The DOH will be required to establish a process for acknowledging receipt of public comments.

The bill requires the DOH to review applications for transfers of ownership within 120 days. If a transfer of ownership application has been deemed acceptable, the DOH will send the applicant an approval letter. To facilitate the timely transfer of Medicare and Medicaid provider numbers, the DOH will be required to issue the new license to the applicant no later than 30 days after the date the notice of transaction is received by the DOH from the applicant. No nursing home will be authorized to delegate substantial management control of the facility to a third party entity without providing prior notice to the DOH.

Third, the bill establishes certain requirements for the sale or transfer of the land or other real property on which a nursing home is located. Prior to the sale or transfer of ownership, the prospective new owner will be required to submit an application to the DOH and the Department of Human Services (DHS) that, among other things, includes the sale or transfer of real property fee established by the DOH.

Fourth, the DOH is to post on its website nursing home lease, rent, or land use rates, or the average rates, as required to be reported to the department by nursing homes under the bill.

Fifth, the bill requires nursing homes to report to the DOH when the nursing home misses a payment related to debt service, rent, payroll, or payroll taxes, which the department, with the assistance of the DHS, is to utilize to identify those nursing homes that may be in financial distress. The DOH is authorized to direct a nursing home to management support services and resources; however, those services and resources will be provided at the nursing home's expense. The DOH may also initiate receivership proceedings in situations where the nursing home does not take sufficient and timely action to avoid an impending bankruptcy or closure, and the DOH finds the bankruptcy or closure would have a significant adverse effect on the health, safety, and welfare of the residents of the nursing home or the DOH determines that bankruptcy or closure would leave the area in which the nursing home is located lacking sufficient nursing home services.

Finally, the bill provides that the DOH may request that the SCI, subject to the SCI's capacity to perform the requested investigation, undertake an investigation of a nursing home or the entities owning, operating, or managing nursing homes. The bill further requires the State Auditor to

undertake a review of the oversight of nursing homes by the DOH and the DHS at least once every three years.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the DOH will incur an indeterminate amount of annual costs under the bill due to increased oversight and enforcement activities related to the transfer of ownership of nursing home facilities and the sale or transfer of land or real property on which nursing home facilities are located. The department will also experience annual indeterminate cost increases to identify nursing home facilities that may be in acute financial distress or at risk of filing for bankruptcy.

Currently, the department's Certificate of Need and Licensing unit enforces the State standards for licensure of health care facilities, and the Health Facility Survey and Field Operations unit enforces State licensing regulations. As such, to the extent that the provisions of the bill overlap with these units' current duties and the department can use existing resources within these units to fulfill the new requirements under the bill, costs will be minimized.

For example, this bill codifies existing regulations that require a prospective new owner to submit an application prior to transferring ownership of a nursing home. The OLS notes, however, that the bill, unlike the existing regulations, provides for varying application requirements under different scenarios. Generally, the components of the application under the bill are identical to the components under existing regulation, except that under the bill certain applicants are to include a three-year projection of profits and losses and a capital budget. As such, the OLS assumes the cost incurred by the department to process such applications will be minimal. However, there is no similar regulatory requirement regarding an application for the sale or transfer of land or real property on which nursing home facilities are located. Therefore, while the department may be able to use its current infrastructure to process these applications, costs may be incurred to hire additional staff to process the increased volume of applications.

Under the bill, the DOH is to establish application fees to be imposed on new owners, which will result in additional annual State revenues. However, the fee schedule is not known at this time so the amount of revenue to be raised is indeterminate, and the OLS cannot ascertain the extent to which the transfer of ownership fee and the sale or transfer of real property fee will offset the oversight and enforcement requirements of the bill. Currently, entities that apply for approval of ownership transfer pay a fee of \$2,500 plus \$15 per bed, while no fee is collected regarding the approval of the sale and transfer of real property.

As the bill's provisions will result in an increased number of surveys conducted by the SCI and an increased number of agency audits conducted by the State Auditor, the OLS estimates that these entities will expend additional State funds on salaries, benefits, and travel within the State. The OLS cannot predict the magnitude of this increase for the SCI, and therefore the cost of this provision, as such surveys are to be conducted at the request of the DOH. The OLS notes that the State Auditor will incur additional expenses to conduct reviews of the DOH and the DHS at least once every three years

Section: Human Services

*Analyst: Sarah Schmidt
Senior Research Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2789

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JULY 30, 2020

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator LORETTA WEINBERG

District 37 (Bergen)

Co-Sponsored by:

Senator Pou

SYNOPSIS

Revises licensure, operational, and reporting requirements for long-term care facilities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/19/2020)

1 AN ACT concerning long-term care facilities, amending P.L.1987,
2 c.322, and supplementing Title 26 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1987, c.322 (C.26:2H-7.2) is amended to
8 read as follows:

9 1. Notwithstanding the provisions of section 7 of P.L.1971,
10 c.136 (C.26:2H-7) to the contrary, a nursing home which proposes
11 to increase the total number of licensed beds contained therein by
12 not more than 10 beds or 10% of its licensed bed capacity,
13 whichever is less, within a period of five years is exempt from the
14 requirement of obtaining a certificate of need if the nursing home is
15 in compliance with all State regulations governing its operations.
16 No transfer of a licensed bed that is added by a nursing home in
17 accordance with the requirements of this section to another nursing
18 home, and no transfer of a licensed bed that is part of an
19 unimplemented certificate of need to another nursing home, shall be
20 authorized except upon application for and receipt of a certificate of
21 need as provided by P.L.1971, c.136 (C.26:2H-1 et seq.).

22 (cf: P.L.1987, c.322, s.1)

23

24 2. (New section) a. The transfer of ownership of a long-term
25 care facility shall not require a certificate of need except when the
26 proposed owner does not satisfy the Department of Health's track
27 record review, including a review of the dashboard data for the
28 facility published pursuant to subsection f. of section 3 of P.L. ,
29 c. (C.) (pending before the Legislature as Senate Bill
30 No.2759 or Assembly Bill No.4478 of 2020/2021) for the preceding
31 three years, if available.

32 b. Prior to transferring ownership of a long-term care facility,
33 the prospective new owner shall submit an application to the Long
34 Term Care Licensing and Certification Program. The application
35 shall include the following items:

36 (1) the transfer of ownership fee established by the department;

37 (2) a cover letter stating the applicant's intent to purchase the
38 long-term care facility, and identification of the facility by name,
39 address, county, and number and type of licensed beds;

40 (3) a description of the proposed transaction, including:

41 (a) identification of the current owners of the long-term care
42 facility;

43 (b) identification of 100 percent of the proposed new owners,
44 including the names and addresses of all principals; and

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (c) if applicable, a copy of an organizational chart, including
- 2 parent corporations and wholly-owned subsidiaries;
- 3 (4) a copy of the agreement of sale and, if applicable, a copy of
- 4 any lease and management agreements;
- 5 (5) a projection of profits and losses for the next three years and
- 6 a capital budget projection for the next three years; and
- 7 (6) disclosure of any licensed health care facilities owned,
- 8 operated, or managed by the proposed owners and principals in any
- 9 state or territory of the United States or in the District of Columbia
- 10 in the preceding five years, along with audited financial statements
- 11 for each such facility for the last three years during which the
- 12 facility was owned, operated, or managed by the third party entity.
- 13 If the owners or principals own, operate, or manage facilities
- 14 located outside New Jersey, the application shall include letters
- 15 from the regulatory agency in each jurisdiction in which a facility is
- 16 owned, operated, or managed, verifying that the facility was
- 17 operated in substantial compliance with the laws of that jurisdiction
- 18 throughout the preceding five year period or for such time during
- 19 that period as the third party entity owned, operated, or managed
- 20 the facility, and that the facility has had no enforcement actions
- 21 imposed during that period of time.
- 22 c. Approval of a transfer of ownership of a long-term care
- 23 facility is contingent upon:
- 24 (1) a review of the applicant's track record by the department,
- 25 including a review of the dashboard data published pursuant to
- 26 subsection f. of section 3 of P.L. , c. (C.) (pending before
- 27 the Legislature as Senate Bill No.2759 or Assembly Bill No.4478 of
- 28 2020/2021) for any other facility owned, operated, or managed by
- 29 the proposed owners and principals in New Jersey, and a
- 30 determination based on that review that approval of the transfer of
- 31 ownership will not present a material risk to the health, safety, or
- 32 welfare of residents of the facility that is the subject of the transfer
- 33 application;
- 34 (2) payment of all outstanding Medicaid audit claims and State
- 35 penalties issued by the department against the current owner, or
- 36 written verification by the applicant that the applicant will assume
- 37 responsibility for payment of such audit findings and State
- 38 penalties; and
- 39 (3) a criminal history background check of each proposed owner
- 40 and principal and a determination that no proposed owner or
- 41 principal has a prior conviction involving fraud or any other
- 42 criminal offense of a financial nature, or a prior conviction that may
- 43 bear on the health and safety of residents of a long-term care
- 44 facility, including, but not limited to, a prior conviction involving
- 45 abuse, neglect, or exploitation of any person.
- 46 d. For the purposes of paragraph (3) of subsection c. of this
- 47 section, the department is authorized to exchange fingerprint data
- 48 with and receive criminal history record background information

1 from the Division of State Police and the Federal Bureau of
2 Investigation consistent with the provisions of applicable federal
3 and State laws, rules, and regulations. Upon receipt of such
4 notification, the department shall make a determination as to
5 whether transferring all or part of the ownership of a long-term care
6 facility to the applicant would constitute a material risk to the
7 health, safety, or welfare of residents of the facility. An applicant
8 for a transfer of ownership of a long-term care facility who is
9 required to complete a criminal history record background check
10 pursuant to this section shall submit to being fingerprinted in
11 accordance with applicable State and federal laws, rules, and
12 regulations. An applicant shall bear the cost for the criminal history
13 record background check, including all costs of administering and
14 processing the check.

15 e. Transfer of ownership application materials shall published
16 on the department's Internet website and shall be subject to public
17 comment for a period of not less than 30 days following submission
18 and publication of the application. The department may hold a
19 public hearing on the application upon request by the applicant, the
20 current owner, or at least 15 members of the public, in which case
21 the application may not be approved until after the public hearing is
22 completed.

23 f. The department shall not issue final approval for a transfer
24 of ownership of a long-term care facility under this section if the
25 department identifies any unresolved issues or questions concerning
26 any proposed owner or principal identified in the application. The
27 department may issue conditional approval of the transfer pending
28 final resolution of all unresolved issues and questions, subject to
29 appointment of a receiver or temporary manager of the facility at
30 the applicant's expense. The department may enter into a standing
31 contract with a third party entity to provide receivership or
32 temporary management services for the purposes of this subsection.
33 A receiver or temporary manager appointed pursuant to this
34 subsection shall have the authority to:

35 (1) make any repairs, improvements, or expenditures necessary
36 to preserve the health and safety of residents and staff at the facility
37 and to ameliorate any condition presenting a significant risk to the
38 health or safety of residents or staff of the facility, and to direct the
39 method or procedures by which this shall be accomplished;

40 (2) hire employees as needed to maintain mandatory staffing
41 levels;

42 (3) receive or expend in a reasonable and prudent manner the
43 revenues of the facility during the appointment period;

44 (4) continue the business of the facility and the care of the
45 residents of the facility in all aspects;

46 (5) perform all acts necessary or appropriate to conserve the
47 property and promote the health, safety, and welfare of the residents
48 of the facility; and

- 1 (6) exercise any other powers or authority conferred by the
2 department by regulation or in the appointment agreement.
- 3 g. When a transfer of ownership application has been reviewed
4 and deemed acceptable, an approval letter from the Long-Term
5 Care Licensing and Certification Program shall be sent to the
6 applicant along with licensure application forms.
- 7 h. Within five days after the transaction has been completed,
8 the applicant shall submit the following documents to the Long-
9 Term Care Licensing and Certification Program:
- 10 (1) completed licensure application forms;
11 (2) a notarized letter stating the date on which the transaction
12 occurred; and
13 (3) a copy of a certificate of continuing occupancy from the
14 local township, or a letter from the township verifying a policy of
15 not issuing any such document for changes of ownership.
- 16 i. The department shall provide for enhanced monitoring of
17 direct care loss ratios reported by a long-term care facility pursuant
18 to subsection c. of section 3 of P.L. , c. (C.) (pending
19 before the Legislature as Senate Bill No.2758 or Assembly Bill
20 No.4482 of 2020/2021) for three years following a transfer of
21 ownership of the long-term care facility.
- 22 j. For a period of six months following the date a transfer of
23 ownership of a long-term care facility is approved under this
24 section, no other transfer of ownership of that long-term care
25 facility shall be approved.
- 26 k. No long-term care facility may delegate management of the
27 facility to a third party entity without prior approval by the
28 department. The owners of the facility shall submit to the
29 department for approval:
- 30 (1) a copy of the management agreement;
31 (2) an organizational chart of the third party entity's proposed
32 management team for the facility;
33 (3) the names and addresses of all owners and principals of the
34 third party entity; and
35 (4) a list of any other licensed health care facilities owned,
36 operated, or managed by the third party entity in any state or
37 territory of the United States or in the District of Columbia for the
38 preceding five years, along with audited financial statements for
39 each such facility for the last three years during which the facility
40 was owned, operated, or managed by the third party entity. If the
41 third party entity owned, operated, or managed facilities located
42 outside New Jersey in the preceding five years, the application shall
43 include letters from the regulatory agency in each jurisdiction in
44 which the third party entity owned, operated, or managed facility in
45 the preceding five years verifying that the facility was operated in
46 substantial compliance with the laws of that jurisdiction throughout
47 the preceding five year period or for such time during that period as
48 the third party entity owned, operated, or managed the facility, and

1 that the facility has had no enforcement actions imposed during that
2 period of time.

3 1. (1) Upon request by the Commissioner of Health and
4 subject to the provisions of P.L.1968, c.266 (C.52:9M-1 et seq.), the
5 State Commission of Investigation shall undertake an investigation
6 of one or more long-term care facilities in the State or the entities
7 owning, operating, or managing one or long-term care facilities in
8 the State, provided that, if the commission determines that the
9 request for an investigation from Commissioner of Health exceeds
10 the commission's capacity to perform such investigations, the
11 commission may advise the Commissioner of Health as to any
12 requests upon which it finds itself unable to proceed. The State
13 Commission of Investigation may, at any time, submit to the
14 Governor, the Commissioners of Health and Human Services, and,
15 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the
16 Legislature, recommendations for administrative or legislative
17 action to improve oversight and transparency in long-term care
18 facilities.

19 (2) Upon approval by the Senate President and the Speaker of
20 the General Assembly, the State Auditor shall undertake an
21 investigation of one or more long-term care facilities in the State or
22 the entities owning, operating, or managing one or long-term care
23 facilities in the State.

24 (3) The State Auditor shall undertake a review of the oversight
25 of long-term care facilities by the Department of Health and the
26 Department of Human Services at least once every three years, with
27 particular focus on compliance with federal inspection
28 requirements, responses to complaints and response times in
29 reviewing complaints, and actions taken to follow up on violations
30 affecting the health, safety, or welfare of residents.

31 m. As used in this section and in section 3 of this act,
32 "principal" means any individual or entity with an interest of five
33 percent or more in an applicant to receive a transfer of ownership of
34 a long-term care facility.

35
36 3. (New section) a. The sale or transfer of the land or other
37 real property on which a long-term care facility is located shall not
38 require a certificate of need except when the proposed owner does
39 not satisfy the Department of Health's track record review,
40 including a review of the dashboard data published pursuant to
41 subsection f. of section 3 of P.L. , c. (C.) (pending before
42 the Legislature as Senate Bill No.2759 or Assembly Bill No.4478 of
43 2020/2021) for the facility for the preceding three years, if
44 available.

45 b. Prior to selling or transferring ownership of the land or other
46 real property on which a long-term care facility is located, the
47 prospective new owner shall submit an application to the Long

1 Term Care Licensing and Certification Program. The application
2 shall include the following items:

3 (1) the sale or transfer of real property fee established by the
4 department;

5 (2) a cover letter stating the applicant's intent to purchase the
6 land or other real property on which a long-term care facility is
7 located, and identification of the facility by name, address, and
8 county;

9 (3) a description of the proposed transaction, including:

10 (a) identification of the current owners of the land or other real
11 property on which a long-term care facility is located;

12 (b) identification of 100 percent of the proposed new owners,
13 including the names and addresses of all principals; and

14 (c) if applicable, a copy of an organizational chart, including
15 parent corporations and wholly-owned subsidiaries;

16 (4) a copy of the agreement of sale or transfer, the proposed
17 terms of the lease, rent, or use agreement with the long-term care
18 facility and, if applicable, a copy of any management agreements;
19 and

20 (5) an attestation that the new owners will lease, rent, or
21 authorize use of the land or other real property by the long-term
22 care facility at a rate that is no more than twice the prevailing fair
23 market rate for the lease, rent, or use of real property by a long-term
24 care facility, as compared with comparable uses in comparable
25 locations and settings at the time the lease, rental, or use agreement
26 is executed.

27 c. Sale and transfer of ownership application materials for the
28 land or real property on which a long-term care facility is located
29 shall be made available on the department's Internet website and
30 shall be subject to public comment for a period of not less than 30
31 days following submission and publication of the application. The
32 department may hold a public hearing on the application upon
33 request by the applicant, the current owner, or at least 15 members
34 of the public, in which case the application may not be approved
35 until after the public hearing is completed.

36 d. The department shall not issue final approval for a sale or
37 transfer of ownership of the land or other real property on which a
38 long-term care facility is located under this section if the
39 department identifies any unresolved issues or questions concerning
40 any proposed owner or principal identified in the application.

41 e. (1) The owner of land or real property on which a long-term
42 care facility is located shall submit to the department a copy of any
43 lease, rent, or use agreement executed by the owner of the land or
44 real property and the long-term care facility on or after the effective
45 date of this act, which agreement shall be submitted to the
46 department no later than 30 days after the date the agreement is
47 executed. The department shall review the terms of the agreement
48 and determine whether the amount charged for the lease, rent, or

1 use of the land or real property exceeds more than twice the fair
2 market value for the lease, rent, or use of land or real property by a
3 long-term care facility, based on an assessment of comparable uses
4 in comparable locations and settings.

5 (2) If the department determines that the terms of the lease, rent,
6 or use agreement for land or real property by a long-term care
7 facility exceed twice the prevailing fair market rate for the lease,
8 rent, or use of real property by a long-term care facility, the
9 department may:

10 (a) require the owner of the land or real property to reimburse
11 the long-term care facility the balance of any payments made for the
12 lease, rent, or use of the land or real property under the current
13 agreement that were in excess of twice the prevailing fair market
14 value for the lease, rent, or use of the real property by the long-term
15 care facility; and

16 (b) require the parties to the agreement to execute a revised
17 agreement under lease, rent, or use terms that do not exceed twice
18 the fair market rate for the lease, rent, or use of land or real property
19 by a long-term care facility.

20 (3) The owner of land or real property on which a long-term
21 care facility is located may request review of the department's
22 determination of the prevailing fair market value of the lease, rent,
23 or use of land or real property by a long-term care facility, which
24 review shall be conducted by the Commissioner of Health. The
25 commissioner's determination upon review shall constitute a final
26 agency decision subject to review by the Appellate Division of the
27 Superior Court.

28

29 4. (New section) The Department of Health shall use the
30 information reported by long-term care facilities pursuant to P.L. ,
31 c. (C.) (pending before the Legislature as Senate Bill
32 No.2759 or Assembly Bill No.4478 of 2020/2021) to identify
33 facilities that may be in acute financial distress or at risk of filing
34 for bankruptcy protection, and develop strategies to assist those
35 facilities in avoiding bankruptcy or the need to close. The
36 department may, as appropriate:

37 a. Provide management support services and resources, as well
38 as any other supports as may be necessary and appropriate to avoid
39 bankruptcy proceedings or cessation of operations;

40 b. Initiate proceedings in a court of competent jurisdiction for
41 the appointment of a receiver for the long-term care facility, which
42 receiver shall have the powers and authorities conferred by the
43 order of receivership, which may include, but shall not be limited
44 to, the authority to:

45 (1) hire any consultants or to undertake any studies of the
46 facility the receiver deems appropriate;

47 (2) make any repairs or improvements as are necessary to ensure
48 the safety of facility residents and staff;

- 1 (3) hire or discharge any employees, including the administrator
2 or manager of the facility;
- 3 (4) receive or expend in a reasonable and prudent manner the
4 revenues of the facility due on the date of the entry of the order of
5 receivership and to become due under such order;
- 6 (5) continue the business of the facility and the care of the
7 residents of the facility in all its aspects;
- 8 (6) do all acts necessary or appropriate to conserve the property
9 and promote the health, safety, and welfare of the residents of the
10 facility; and
- 11 (7) exercise such other powers as the receiver deems necessary
12 or appropriate to implement the court order; and
- 13 c. Take such other steps and actions as may be available to
14 ensure continuity of care for, and the safety of, residents of the
15 facility.

16
17 5. This act shall take effect 60 days after the date of enactment.
18
19

20 STATEMENT
21

22 This bill revises certain requirements concerning the licensure
23 and operations of long-term care facilities.

24 Specifically, the bill revises a provision of current law that
25 allows nursing homes to increase their total bed capacity by a
26 limited amount without the need to obtain a certificate of need, to
27 provide that beds added in this manner may not be transferred to
28 another nursing home without obtaining a certificate of need. The
29 bill additionally prohibits the transfer of beds that are part of an
30 unimplemented certificate of need to another nursing facility
31 without obtaining a certificate of need.

32 With regard to transfers of ownership of long-term care facilities,
33 the bill codifies an existing regulation providing that ownership
34 transfers do not require a certificate of need except when the
35 proposed owner does not satisfy the Department of Health's (DOH)
36 track record review. The bill revises this requirement to provide
37 that the track review will include a review of the dashboard data for
38 the facility for the preceding three years, if available, which
39 dashboard is to be created under another bill pending in the current
40 session, Senate Bill No.2759 and Assembly Bill No.4478.

41 Prior to transferring ownership of a long-term care facility, the
42 prospective new owner will be required to submit an application to
43 the Long Term Care Licensing and Certification Program in the
44 DOH. The application is to specifically include: (1) the transfer of
45 ownership fee established by the DOH; (2) a cover letter stating the
46 applicant's intent to purchase the long-term care facility, and
47 identification of the facility by name, address, county, and number
48 and type of licensed beds; (3) a description of the parties to the

1 proposed transaction, including the current owners of the long-term
2 care facility, the proposed new owners, including the names and
3 addresses of all principals, and if applicable, a copy of an
4 organizational chart, including parent corporations and wholly-
5 owned subsidiaries; (4) a copy of the agreement of sale and, if
6 applicable, a copy of any lease and management agreements; (5) a
7 projection of profits and losses for the next three years and a capital
8 budget projection for the next three years; and (6) disclosure of any
9 licensed health care facilities owned, operated, or managed by the
10 proposed owners and principals in the preceding five years,
11 including verification that any out-of-State facilities were in
12 compliance with the laws of the out-of-State jurisdiction during that
13 period and had no enforcement actions imposed during the past 12
14 months. The applicant will also be required to provide audited
15 financial statements for each facility for the last three years during
16 that period in which the applicant owned, operated, or managed the
17 facility. "Principal" is defined in the bill to mean any individual or
18 entity with an interest of five percent or more in an applicant to
19 receive a transfer of ownership of a long-term care facility.

20 Approval of a transfer of ownership of a long-term care facility
21 will be contingent upon a review of the applicant's track record by
22 the DOH, including a review of the dashboard data for any other
23 facility owned, operated, or managed by the proposed owners and
24 principals in New Jersey, payment or assumption of responsibility
25 of all outstanding Medicaid audit claims and State penalties issued
26 by the DOH against the current owner, and a criminal history
27 background check of each proposed owner and principal and a
28 determination that no proposed owner or principal has a prior
29 conviction involving fraud or other criminal offenses of a financial
30 nature, or a prior conviction that may bear on the health, safety, or
31 welfare of residents of a long-term care facility, including, but not
32 limited to, a prior conviction involving abuse, neglect, or
33 exploitation of any person.

34 Transfer of ownership application materials will be made
35 available on the DOH's Internet website and will be subject to
36 public comment for a period of not less than 30 days following
37 submission and publication of the application. The DOH may hold
38 a public hearing on the application upon request by the applicant,
39 the current owner, or at least 15 members of the public, in which
40 case the application may not be approved until after the public
41 hearing is completed.

42 The DOH may not issue final approval for a transfer of
43 ownership of a long-term care facility if the DOH identifies any
44 unresolved issues or questions concerning any proposed owner or
45 principal identified in the application. The DOH will be authorized
46 to issue conditional approval of the transfer pending final resolution
47 of all unresolved issues and questions, subject to appointment of a
48 receiver or temporary manager of the facility at the applicant's

1 expense. The DOH will be authorized to enter into a standing
2 contract with a third party entity to provide receivership or
3 temporary management services. A receiver or temporary manager
4 will have the authority to: (1) make any necessary repairs,
5 improvements, or expenditures necessary to preserve the health and
6 safety of residents and staff at the facility; (2) hire employees as
7 needed to maintain mandatory staffing levels; (3) receive or expend
8 in a reasonable and prudent manner the revenues of the facility
9 during the appointment period; (4) continue the business of the
10 facility and the care of the residents of the facility in all aspects; (5)
11 perform all acts necessary or appropriate to conserve the property
12 and promote the health, safety, and welfare of the residents of the
13 facility; and (6) exercise any other powers or authority conferred by
14 the DOH by regulation or in the appointment agreement.

15 When a transfer of ownership application has been reviewed and
16 deemed acceptable, an approval letter from the Long-Term Care
17 Licensing and Certification Program will be sent to the applicant
18 along with licensure application forms. Within five days after the
19 transaction has been completed, the applicant will be required to
20 submit to the Long-Term Care Licensing and Certification Program
21 completed licensure application forms, a notarized letter stating the
22 date on which the transaction occurred, and a copy of a certificate
23 of continuing occupancy from the local township, or a letter from
24 the township verifying a policy of not issuing any such document
25 for changes of ownership.

26 The DOH is to provide for enhanced monitoring of direct care
27 loss ratios reported by a long-term care facility pursuant to another
28 bill pending in the current session, Assembly Bill No.4482 and
29 Senate Bill No.2758, for three years following a transfer of
30 ownership of the long-term care facility. For a period of six months
31 following a transfer of ownership of a long-term care facility, no
32 other transfer of ownership of that long-term care facility may be
33 approved.

34 No long-term care facility will be authorized to delegate
35 management of the facility to a third party entity without prior
36 approval by the DOH. The owners of the facility will be required
37 submit to the DOH for approval: a copy of the management
38 agreement; an organizational chart of the third party entity's
39 proposed management team for the facility; the names and
40 addresses of all owners and principals of the third party entity; and
41 a list of any other licensed health care facilities owned, operated, or
42 managed by the third party entity for the preceding five years, along
43 with verification that any out-of-State facilities were operated in
44 substantial compliance with the laws of that jurisdiction and had no
45 enforcement actions imposed throughout the preceding five year
46 period or for such time during that period as the third party entity
47 owned, operated, or managed the facility. The third party entity
48 will also be required to submit audited financial statements for the

1 last three years during that period during which the third party
2 entity owned, managed, or operated the other facility.

3 The bill provides that the DOH may request that the State
4 Commission of Investigation (SCI) or the State Auditor undertake
5 an investigation of one or more long-term care facilities in the State
6 or the entities owning, operating, or managing the facilities. A
7 request for the State Auditor to undertake an investigation will
8 require approval by the Senate President and the Speaker of the
9 General Assembly. A request for the SCI to investigate one or
10 more facilities will be subject to the SCI's capacity to perform the
11 requested investigation. The SCI will also be allowed, at any time,
12 to submit to the Governor, the Commissioners of Health and Human
13 Services, and the Legislature, recommendations for administrative
14 or legislative action to improve oversight and transparency in long-
15 term care facilities.

16 The bill further requires the State Auditor to undertake a review
17 of the oversight of long-term care facilities by the DOH and the
18 Department of Human Services at least once every three years, with
19 particular focus on compliance with federal inspection
20 requirements, responses to complaints and response times in
21 reviewing complaints, and actions taken to follow up on violations
22 affecting the health, safety, or welfare of residents.

23 The bill additionally establishes certain requirements for the sale
24 or transfer of the land or other real property on which a long-term
25 care facility is located. The bill provides that a certificate of need
26 will not be required unless the proposed owner does not satisfy the
27 DOH's track record review, including a review of the dashboard
28 data for the facility for the preceding three years, if available. Prior
29 to selling or transferring ownership of the land or other real
30 property on which a long-term care facility is located, the
31 prospective new owner will be required to submit an application to
32 the Long Term Care Licensing and Certification Program that
33 includes: (1) the sale or transfer of real property fee established by
34 the department; (2) a cover letter stating the applicant's intent to
35 purchase the land or other real property and identification of the
36 facility; (3) a description of the parties to the proposed transaction,
37 including the current owners, the proposed new owners, including
38 the names and addresses of all principals, and if applicable, a copy
39 of an organizational chart, including parent corporations and
40 wholly-owned subsidiaries; (4) a copy of the agreement of sale or
41 transfer, the proposed terms of the lease, rent, or use agreement
42 with the long-term care facility and, if applicable, a copy of any
43 management agreements; and (5) an attestation that the new owners
44 will lease, rent, or authorize use of the land or other real property by
45 the long-term care facility at a rate that is no more than twice the
46 prevailing fair market rate for the lease, rent, or use of real property
47 by a long-term care facility, as compared with comparable uses in

1 comparable locations and settings at the time the lease, rental, or
2 use agreement is executed.

3 Applications for the sale or transfer of land or real property on
4 which a long-term care facility is located will be made available on
5 the DOH's Internet website and will be subject to public comment
6 for a period of at least 30 days. The DOH will be authorized to
7 hold a public hearing on the application upon request by the
8 applicant, the current owner, or at least 15 members of the public,
9 in which case the application may not be approved until after the
10 public hearing is completed.

11 The DOH may not issue final approval for sale or transfer of
12 ownership of the land or other real property on which a long-term
13 care facility is located if the DOH identifies any unresolved issues
14 or questions concerning any proposed owner or principal.

15 The owner of land or real property on which a long-term care
16 facility is located will be required to submit to the DOH a copy of
17 any lease, rent, or use agreement executed by the owner and the
18 long-term care facility within 30 days after the date the agreement
19 is executed. The DOH will review the terms of the agreement and
20 determine whether the amount charged for the lease, rent, or use of
21 the land or real property exceeds more than twice the fair market
22 value for the lease, rent, or use of land or real property by a long-
23 term care facility, based on an assessment of comparable uses in
24 comparable locations and settings. If the DOH determines that the
25 terms of the agreement exceed twice the prevailing fair market rate
26 for the lease, rent, or use of real property by a long-term care
27 facility, the DOH may require the owner to reimburse the long-term
28 care facility for the balance of any payments made that were in
29 excess of twice the prevailing fair market value for comparable
30 agreements, and require the parties to execute a revised agreement
31 under terms that do not exceed twice the fair market rate for the
32 lease, rent, or use of land or real property by a long-term care
33 facility. Owners of land or real property on which a long-term care
34 facility is located may request that the Commissioner of Health
35 review the DOH's determination of the prevailing fair market value.
36 The commissioner's determination upon review will constitute a
37 final agency decision subject to review by the Appellate Division of
38 the Superior Court.

39 The bill additionally requires the DOH to use certain information
40 reported by long-term care facilities to identify facilities that may
41 be in acute financial distress or at risk of filing for bankruptcy
42 protection, and develop strategies to assist those facilities in
43 avoiding bankruptcy or the need to close. Specifically, the DOH
44 will be authorized to provide management services and resources
45 and other supports as are necessary; initiate court proceedings for
46 the appointment of a receiver; take other steps to ensure the
47 continuity of care for, and the safety of, residents of the facility.

1 A receiver appointed under the bill will have the authority to:
2 hire consultants to undertake a study of the facility; make any
3 repairs or improvements as are necessary to ensure the safety of
4 facility residents and staff; hire or discharge any employees
5 including the administrator or manager of the facility; receive or
6 expend in a reasonable and prudent manner the revenues of the
7 facility due on the date of the entry of the order of receivership and
8 to become due under such order; continue the business of the
9 facility and the care of the residents of the facility in all its aspects;
10 do all acts necessary or appropriate to conserve the property and
11 promote the health, safety, and welfare of the residents of the
12 facility; and exercise any other powers as the receiver deems
13 necessary or appropriate to implement the court order establishing
14 the receivership.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 2789

STATE OF NEW JERSEY

DATED: OCTOBER 8, 2020

The Senate Health, Human Services and Senior Citizens Committee reports favorably Senate Bill No. 2789.

This bill revises certain requirements concerning the licensure and operations of long-term care facilities.

Specifically, the bill revises a provision of current law that allows nursing homes to increase their total bed capacity by a limited amount without the need to obtain a certificate of need, to provide that beds added in this manner may not be transferred to another nursing home without obtaining a certificate of need. The bill additionally prohibits the transfer of beds that are part of an unimplemented certificate of need to another nursing facility without obtaining a certificate of need.

With regard to transfers of ownership of long-term care facilities, the bill codifies an existing regulation providing that ownership transfers do not require a certificate of need except when the proposed owner does not satisfy the Department of Health's (DOH) track record review. The bill revises this requirement to provide that the track review will include a review of the dashboard data for the facility for the preceding three years, if available, which dashboard is to be created under another bill pending in the current session, Senate Bill No. 2759 and Assembly Bill No. 4478.

Prior to transferring ownership of a long-term care facility, the prospective new owner will be required to submit an application to the Long Term Care Licensing and Certification Program in the DOH. The application is to specifically include: (1) the transfer of ownership fee established by the DOH; (2) a cover letter stating the applicant's intent to purchase the long-term care facility, and identification of the facility by name, address, county, and number and type of licensed beds; (3) a description of the parties to the proposed transaction, including the current owners of the long-term care facility, the proposed new owners, including the names and addresses of all principals, and, if applicable, a copy of an organizational chart, including parent corporations and wholly-owned subsidiaries; (4) a copy of the agreement of sale and, if applicable, a copy of any lease and management agreements; (5) a projection of profits and losses for the next three years and a capital budget projection for the next three years; and (6) disclosure of any licensed health care facilities owned,

operated, or managed by the proposed owners and principals in the preceding five years, including verification that any out-of-State facilities were in compliance with the laws of the out-of-State jurisdiction during that period and had no enforcement actions imposed during the past 12 months. The applicant will also be required to provide audited financial statements for each facility for the last three years during that period in which the applicant owned, operated, or managed the facility. "Principal" is defined in the bill to mean any individual or entity with an interest of five percent or more in an applicant to receive a transfer of ownership of a long-term care facility.

Approval of a transfer of ownership of a long-term care facility will be contingent upon a review of the applicant's track record by the DOH, including a review of the dashboard data for any other facility owned, operated, or managed by the proposed owners and principals in New Jersey, payment or assumption of responsibility of all outstanding Medicaid audit claims and State penalties issued by the DOH against the current owner, and a criminal history background check of each proposed owner and principal and a determination that no proposed owner or principal has a prior conviction involving fraud or other criminal offenses of a financial nature, or a prior conviction that may bear on the health, safety, or welfare of residents of a long-term care facility, including, but not limited to, a prior conviction involving abuse, neglect, or exploitation of any person.

Transfer of ownership application materials will be made available on the DOH's Internet website and will be subject to public comment for a period of not less than 30 days following submission and publication of the application. The DOH may hold a public hearing on the application upon request by the applicant, the current owner, or at least 15 members of the public, in which case the application may not be approved until after the public hearing is completed.

The DOH may not issue final approval for a transfer of ownership of a long-term care facility if the DOH identifies any unresolved issues or questions concerning any proposed owner or principal identified in the application. The DOH will be authorized to issue conditional approval of the transfer pending final resolution of all unresolved issues and questions, subject to appointment of a receiver or temporary manager of the facility at the applicant's expense. The DOH will be authorized to enter into a standing contract with a third party entity to provide receivership or temporary management services. A receiver or temporary manager will have the authority to: (1) make any necessary repairs, improvements, or expenditures necessary to preserve the health and safety of residents and staff at the facility; (2) hire employees as needed to maintain mandatory staffing levels; (3) receive or expend in a reasonable and prudent manner the revenues of the facility during the appointment period; (4) continue the business of the facility and the care of the residents of the facility in all aspects; (5)

perform all acts necessary or appropriate to conserve the property and promote the health, safety, and welfare of the residents of the facility; and (6) exercise any other powers or authority conferred by the DOH by regulation or in the appointment agreement.

When a transfer of ownership application has been reviewed and deemed acceptable, an approval letter from the Long-Term Care Licensing and Certification Program will be sent to the applicant along with licensure application forms. Within five days after the transaction has been completed, the applicant will be required to submit to the Long-Term Care Licensing and Certification Program completed licensure application forms, a notarized letter stating the date on which the transaction occurred, and a copy of a certificate of continuing occupancy from the local township, or a letter from the township verifying a policy of not issuing any such document for changes of ownership.

The DOH is to provide for enhanced monitoring of direct care ratios reported by a long-term care facility pursuant to section 3 of P.L.2020, c.89 (C.30:4D-7cc) for three years following a transfer of ownership of the long-term care facility. For a period of six months following a transfer of ownership of a long-term care facility, no other transfer of ownership of that long-term care facility may be approved.

No long-term care facility will be authorized to delegate management of the facility to a third party entity without prior approval by the DOH. The owners of the facility will be required submit to the DOH for approval: a copy of the management agreement; an organizational chart of the third party entity's proposed management team for the facility; the names and addresses of all owners and principals of the third party entity; and a list of any other licensed health care facilities owned, operated, or managed by the third party entity for the preceding five years, along with verification that any out-of-State facilities were operated in substantial compliance with the laws of that jurisdiction and had no enforcement actions imposed throughout the preceding five year period or for such time during that period as the third party entity owned, operated, or managed the facility. The third party entity will also be required to submit audited financial statements for the last three years during that period during which the third party entity owned, managed, or operated the other facility.

The bill provides that the DOH may request that the State Commission of Investigation (SCI) or the State Auditor undertake an investigation of one or more long-term care facilities in the State or the entities owning, operating, or managing the facilities. A request for the State Auditor to undertake an investigation will require approval by the Senate President and the Speaker of the General Assembly. A request for the SCI to investigate one or more facilities will be subject to the SCI's capacity to perform the requested investigation. The SCI will also be allowed, at any time, to submit to the Governor, the

Commissioners of Health and Human Services, and the Legislature, recommendations for administrative or legislative action to improve oversight and transparency in long-term care facilities.

The bill further requires the State Auditor to undertake a review of the oversight of long-term care facilities by the DOH and the Department of Human Services at least once every three years, with particular focus on compliance with federal inspection requirements, responses to complaints and response times in reviewing complaints, and actions taken to follow up on violations affecting the health, safety, or welfare of residents.

The bill additionally establishes certain requirements for the sale or transfer of the land or other real property on which a long-term care facility is located. The bill provides that a certificate of need will not be required unless the proposed owner does not satisfy the DOH's track record review, including a review of the dashboard data for the facility for the preceding three years, if available. Prior to selling or transferring ownership of the land or other real property on which a long-term care facility is located, the prospective new owner will be required to submit an application to the Long Term Care Licensing and Certification Program that includes: (1) the sale or transfer of real property fee established by the department; (2) a cover letter stating the applicant's intent to purchase the land or other real property and identification of the facility; (3) a description of the parties to the proposed transaction, including the current owners, the proposed new owners, including the names and addresses of all principals, and if applicable, a copy of an organizational chart, including parent corporations and wholly-owned subsidiaries; (4) a copy of the agreement of sale or transfer, the proposed terms of the lease, rent, or use agreement with the long-term care facility and, if applicable, a copy of any management agreements; and (5) an attestation that the new owners will lease, rent, or authorize use of the land or other real property by the long-term care facility at a rate that is no more than twice the prevailing fair market rate for the lease, rent, or use of real property by a long-term care facility, as compared with comparable uses in comparable locations and settings at the time the lease, rental, or use agreement is executed.

Applications for the sale or transfer of land or real property on which a long-term care facility is located will be made available on the DOH's Internet website and will be subject to public comment for a period of at least 30 days. The DOH will be authorized to hold a public hearing on the application upon request by the applicant, the current owner, or at least 15 members of the public, in which case the application may not be approved until after the public hearing is completed.

The DOH may not issue final approval for sale or transfer of ownership of the land or other real property on which a long-term care

facility is located if the DOH identifies any unresolved issues or questions concerning any proposed owner or principal.

The owner of land or real property on which a long-term care facility is located will be required to submit to the DOH a copy of any lease, rent, or use agreement executed by the owner and the long-term care facility within 30 days after the date the agreement is executed. The DOH will review the terms of the agreement and determine whether the amount charged for the lease, rent, or use of the land or real property exceeds more than twice the fair market value for the lease, rent, or use of land or real property by a long-term care facility, based on an assessment of comparable uses in comparable locations and settings. If the DOH determines that the terms of the agreement exceed twice the prevailing fair market rate for the lease, rent, or use of real property by a long-term care facility, the DOH may require the owner to reimburse the long-term care facility for the balance of any payments made that were in excess of twice the prevailing fair market value for comparable agreements, and require the parties to execute a revised agreement under terms that do not exceed twice the fair market rate for the lease, rent, or use of land or real property by a long-term care facility. Owners of land or real property on which a long-term care facility is located may request that the Commissioner of Health review the DOH's determination of the prevailing fair market value. The commissioner's determination upon review will constitute a final agency decision subject to review by the Appellate Division of the Superior Court.

The bill additionally requires the DOH to use certain information reported by long-term care facilities to identify facilities that may be in acute financial distress or at risk of filing for bankruptcy protection, and develop strategies to assist those facilities in avoiding bankruptcy or the need to close. Specifically, the DOH will be authorized to provide management services and resources and other supports as are necessary; initiate court proceedings for the appointment of a receiver; take other steps to ensure the continuity of care for, and the safety of, residents of the facility.

A receiver appointed under the bill will have the authority to: hire consultants to undertake a study of the facility; make any repairs or improvements as are necessary to ensure the safety of facility residents and staff; hire or discharge any employees including the administrator or manager of the facility; receive or expend in a reasonable and prudent manner the revenues of the facility due on the date of the entry of the order of receivership and to become due under such order; continue the business of the facility and the care of the residents of the facility in all its aspects; do all acts necessary or appropriate to conserve the property and promote the health, safety, and welfare of the residents of the facility; and exercise any other powers as the receiver deems necessary or appropriate to implement the court order establishing the receivership.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2789

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 21, 2021

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2789, with committee amendments.

As amended by the committee, this bill revises certain requirements concerning the licensure and operations of nursing homes.

Specifically, the bill as amended revises a provision of current law that allows nursing homes to increase their total bed capacity by a limited amount without the need to obtain a certificate of need, to provide that beds added in this manner may not be transferred to another nursing home except with an approved certificate of need, and a nursing home that has removed beds from its license within the preceding five years will not be eligible to add beds in this manner. The bill additionally prohibits the transfer of beds that are part of an unimplemented certificate of need to another nursing facility without an approved certificate of need.

As amended, the bill requires that, prior to transferring ownership of a nursing home, the prospective new owner will be required to submit an application to the Department of Health (DOH), the requirements of which will vary depending on whether the applicant has ever owned or operated a nursing home in New Jersey and whether the application is for transfer of a controlling or non-controlling interest in the nursing home. All applications are to include: (1) the transfer of ownership fee established by the DOH; (2) a cover letter stating the applicant's intent to purchase the nursing home, and identification of the nursing home by name, address, county, and number and type of licensed beds; (3) a description of the parties to the proposed transaction, including the current owners of the nursing home, the proposed new owners, including the names and addresses of all principals and interested parties, and if applicable, a copy of an organizational chart, including parent corporations and wholly-owned subsidiaries; and (4) a copy of the agreement of sale and, if applicable, a copy of any lease and management agreements.

For transfers of ownership of a controlling interest in a nursing home to a person or entity that has never owned or operated a nursing home in New Jersey, and for transfers of a controlling interest in a nursing home that are submitted within six months after a prior

transfer of a controlling interest in the nursing home was approved, the applicant is additionally required to: submit a projection of profits and losses for the next three years and a capital budget projection for the next three years; disclose any licensed health care facilities owned, operated, or managed by the proposed owners and principals in the preceding three years; disclose any enforcement actions imposed during the past three years against any facility owned, operated, or managed by the applicant in any jurisdiction; provide owner-certified financial statements for each facility for the last three years during that period in which the applicant owned, operated, or managed the facility; hold a public hearing on the application; and complete a criminal history record background check of all owners and principals.

“Principal” is defined in the bill to mean any individual or entity with an interest of five percent or more in an applicant to receive a transfer of ownership of a nursing home. “Interested party” is defined in the bill to mean any individual or entity with an interest of one percent or more but less than five percent in an applicant to receive a transfer of ownership of a nursing home.

For transfers of ownership of a controlling interest in a nursing home to an applicant that has owned or operated a nursing home in New Jersey, the application is to include a projection of profits and losses for the next three years and a capital budget projection for the next three years; and disclosure of any licensed health care facilities owned, operated, or managed by the proposed owners and principals in any state or territory of the United States or in the District of Columbia in the preceding year, along with owner-certified financial statements for each facility owned, operated, or managed by the proposed owners and principals in New Jersey for the last year during which the facility was owned, operated, or managed by owner or principal.

For transfers of ownership of a non-controlling interest in a nursing home to an applicant that has never owned or operated a nursing home in New Jersey, the applicant will be required to disclose any licensed health care facilities owned, operated, or managed by the proposed owners and principals in any state or territory of the United States or in the District of Columbia in the preceding year and any enforcement actions imposed during the preceding year against any facility owned, operated, or managed by the applicant in any jurisdiction, and submit to a criminal history record background check of each proposed owner and principal.

For transfers of ownership of a non-controlling interest in a nursing home to an applicant that has owned or operated a licensed health care facility in New Jersey, the applicant will be required to disclose any licensed health care facilities owned, operated, or managed by the proposed owners and principals in any state or territory of the United States or in the District of Columbia in the preceding year and any enforcement actions imposed during the preceding year against any

facility owned, operated, or managed by the applicant in any jurisdiction.

For applicants required to complete a criminal history record background check, the DOH will be required to make a determination as to whether transferring all or part of the ownership of a nursing home to the applicant would constitute a material risk to the health, safety, or welfare of residents of the nursing home, which will include determining whether any owner or principal has a prior conviction involving fraud or any other criminal offense of a financial nature, or a prior conviction that may bear on the health and safety of residents of a long-term care facility, including, but not limited to, a prior conviction involving abuse, neglect, or exploitation of any person.

Approval of any application for transfer of ownership of a nursing home will be contingent upon a review of the applicant's history of disciplinary actions assessed by the DOH for any other facility owned, operated, or managed by the proposed owners and principals in New Jersey, payment or assumption of responsibility of all outstanding and issued Medicaid audit claims and State penalties issued by the DOH against the current owner, unless the claims remain under appeal, in which case the applicant will be required to submit written verification that either the applicant or the current owners of the nursing home will assume responsibility for payment of any audit recoveries and State penalties at the conclusion of the appeal.

The bill, as amended, requires copies of the application, with certain proprietary and personal identifying information redacted, to be posted on the DOH's Internet website. All applicants will have the option to prepare a summary of the application materials that can be published on the DOH's website in lieu of the application itself. The bill, as amended, provides that application materials may not be used in any adverse administrative or disciplinary action against an applicant.

All applications will be subject to public comment for a period of not less than 30 days, which comment period is to be opened within 30 days after the date the application is submitted to the DOH. The DOH will be required to establish a process for acknowledging receipt of public comments.

The bill as amended requires DOH to complete review of applications for transfers of ownership within 120 days. When a transfer of ownership application has been reviewed and deemed acceptable, the DOH will send the applicant an approval letter. Within five days after the transaction has been completed, the applicant will be required to submit to the DOH certification of closing from an attorney or a notarized letter from the applicant stating the date on which the transaction occurred, along with an executed bill of sale or assignment. To facilitate the timely transfer of Medicare and Medicaid provider numbers, the DOH will be required to issue the new

license to the applicant no later than 30 days after the date the notice is received by the DOH.

No nursing home will be authorized to delegate substantial management control of the facility to a third party entity without providing prior notice to the DOH. The owners of the facility will be required to submit with the notice: a copy of the management agreement; an organizational chart of the third party entity's proposed management team for the nursing home; the names and addresses of all owners, principals, and interested parties of the third party entity; and a list of any other licensed health care facilities owned, operated, or managed by the third party entity for the preceding three years, along with disclosure of any enforcement actions imposed during that period against any facility owned, operated, or managed by the applicant during that period. The third party entity will also be required to submit owner-certified financial statements for the last three years during that period which the third party entity owned, managed, or operated the other facility.

The bill provides that the DOH may request that the State Commission of Investigation (SCI) or the State Auditor undertake an investigation of one or more nursing homes in the State or the entities owning, operating, or managing the nursing homes. A request for the State Auditor to undertake an investigation will require approval by the Senate President and the Speaker of the General Assembly. A request for the SCI to investigate one or more nursing homes will be subject to the SCI's capacity to perform the requested investigation. The SCI will also be allowed, at any time, to submit to the Governor, the Commissioners of Health and Human Services, and the Legislature, recommendations for administrative or legislative action to improve oversight and transparency in nursing homes.

The bill further requires the State Auditor to undertake a review of the oversight of nursing homes by the DOH and the Department of Human Services at least once every three years, with particular focus on compliance with federal inspection requirements, responses to complaints and response times in reviewing complaints, and actions taken to follow up on violations affecting the health, safety, or welfare of residents.

The bill, as amended, additionally establishes certain requirements for the sale or transfer of the land or other real property on which a nursing home is located. Prior to selling or transferring ownership of the land or other real property on which a nursing home is located, the prospective new owner will be required to submit an application to the DOH and the Department of Human Services (DHS) that includes: (1) the sale or transfer of real property fee established by the department; (2) a cover letter stating the applicant's intent to purchase the land or other real property and identification of the nursing home; (3) a description of the parties to the proposed transaction, including the current owners, the proposed new owners, including the names and

addresses of all principals and interested parties, and if applicable, a copy of an organizational chart, including parent corporations and wholly-owned subsidiaries; (4) a copy of the agreement of sale or transfer, the proposed terms of the lease, rent, or use agreement with the nursing home and, if applicable, a copy of any management agreements; and (5) an attestation that the new owners will lease, rent, or authorize use of the land or other real property by the nursing home at a rate that is consistent with the fair market value for the lease, rent, or use of similar facilities in the same market area. A summary of the notice will be posted on the DOH's website.

The DHS will be required to utilize the direct care ratios reported pursuant to subsection c. of section 3 of P.L.2020, c.89 (C.30:4D-7cc) to determine the average rates for the lease, rent, or use of land or other real property by nursing homes in the State, which average rates are to be adjusted in each market area to account for factors that affect the average lease, rent, or use rates in that market area. The DHS will have the authority to: (1) establish caps on the maximum lease, rent, or use rates that can be charged to a nursing home for the use of real property; (2) determine whether a nursing home is paying a lease, rent, or use rate for land or other real property that significantly exceeds the fair market value for similar facilities in the same market area; and (3) require that any rate that significantly exceeds the fair market value for the lease, rent, or use of similar facilities in that market area be reduced, for the duration of the current lease, rent, or use agreement, to match the average lease, rent, or use rate for similar facilities in the same market area.

As amended, the bill requires nursing homes to report to the DOH when the nursing home misses a payment related to debt service, rent, payroll, or payroll taxes, which will serve as an indication that the nursing home may be in financial distress. The DOH will be required to develop strategies to assist facilities in financial distress to avoid bankruptcy or the need to close. Specifically, the DOH will be authorized to provide management services and resources and other supports as are necessary; initiate court proceedings for the appointment of a receiver; and take other steps to ensure the continuity of care for, and the safety of, residents of the nursing home.

A receiver appointed under the bill will have the authority to: hire consultants to undertake a study of the nursing home; make any repairs or improvements as are necessary to ensure the safety of nursing home residents and staff; hire or discharge any employees including the administrator or manager of the nursing home; receive or expend in a reasonable and prudent manner the revenues of the nursing home due on the date of the entry of the order of receivership and to become due under such order; continue the business of the nursing home and the care of the residents of the nursing home in all its aspects; do all acts necessary or appropriate to conserve the property and promote the health, safety, and welfare of the residents of the nursing home; and

exercise any other powers as the receiver deems necessary or appropriate to implement the court order establishing the receivership.

COMMITTEE AMENDMENTS:

The committee amendments revise the scope of the bill to make it applicable to nursing homes only, rather than all long-term care facilities. The amendments update the title and synopsis of the bill to reflect this change.

The committee amendments revise the new restrictions on transferring beds added under an existing exception to the certificate of need requirement to provide that beds added under that provision, as well as beds that are part of an unimplemented certificate of need, may not be transferred to any other nursing home except with an approved certificate of need. The amendments further provide that a nursing home that has removed beds from its license within the preceding five years will not be eligible for the certificate of need exception.

The committee amendments remove language referring to the DOH's track record review of applicants for transfer ownership of a nursing home and for transfer of the land or other real property on which a nursing home is located, as well as references to the Long Term Care Licensing and Certification Program, which language would have codified an outdated regulation and referred to a program that does not currently exist. In lieu of track record review, the DOH will review the applicant's history of disciplinary actions assessed in connection with other facilities the applicant owns, operates, or manages in the State.

The committee amendments revise the requirements to apply for transfers of ownership of a nursing home to replace a standard that applied to all transfers of ownership, to create four levels of review based on whether the applicant has ever owned or operated a licensed health care facility in New Jersey and whether the transfer would pertain to a controlling or a non-controlling interest in the nursing home. The amendments provide that only certain applicants will be subject to a criminal history record background check and required to hold a public hearing on the application. The amendments further revise the look-back period concerning other health care facilities owned or operated by the applicant.

The committee amendments require the application materials for all applicants to include the names and addresses of all principals and interested parties in the nursing home. The bill revises the definition of "principal" to mean anyone with more than a five percent interest in an applicant for transfer of a nursing home, and add a new definition of "interested party" to mean an entity with an interest in the applicant of one percent or more but less than five percent.

The committee amendments revise the requirement for the DOH to hold a public hearing on all applications for transfer of ownership of a nursing home, to instead provide that, for applicants that are subject to

the highest level of review, the nursing home that is the subject of the transfer of ownership application will be required to hold the public hearing no earlier than 30 days after the date the application is received by the DOH, and invite the Attorney General and the Commissioner of Health, or their representatives, to attend the hearing. The application may not be approved until after the public hearing is completed. A public hearing is only required for applicants seeking to acquire a controlling interest in a nursing home that have never owned or operated a health care facility in New Jersey, as well as to applicants for transfer of a controlling interest within six months after a previous transfer of a controlling interest was approved; a public hearing is not required for other types of applicant.

The committee amendments revise a requirement for all applicants for transfers of ownership of a nursing home to obtain letters from other jurisdictions in which they own, operate, or manage a long-term care facility verifying that the facility was operated in compliance with the laws of that other jurisdiction, to instead require applicants who have never owned or operated a licensed health care facility in New Jersey to disclose any enforcement actions taken against a facility owned, operated, or managed in another jurisdiction. The amendments revise the look-back periods concerning facilities owned, operated, or managed by the applicant, which will vary depending on the level of review applicable to the application.

The committee amendments add language providing that application materials for the transfer of ownership of a nursing home may not be used in administrative actions against the applicant.

The committee amendments revise the criminal history record background check requirements to include language requiring the Division of State Police to provide the DOH with notice in the event that an individual who completed a criminal history record background check is subsequently convicted of a crime or offense in the State.

The committee amendments revise the requirements for transfer of ownership of a nursing home to require that the DOH redact certain personal and proprietary information from the application before posting it on the DOH's Internet website. Alternatively, applicants will have the option to prepare a summary of the application that will be posted on the DOH's Internet website.

The committee amendments remove provisions concerning the specific authorities that would be granted to a receiver or temporary manager of a nursing home during a period of conditional approval.

The committee amendments remove a requirement for an approved applicant to submit to the DOH completed licensure application forms and certificates of continuing occupancy, and to instead require the applicant to submit certain documents certifying the date of the transaction along with an executed bill of sale or assignment. The amendments require the DOH to issue the new license to the applicant no later than 30 days after the date the notice is received.

The committee amendments remove a provision requiring enhanced monitoring of a nursing home's direct care loss ratio following a transfer of ownership and a six-month prohibition against subsequent transfers of ownership.

The committee amendments remove a requirement that the DOH approve management delegation agreements and instead require the nursing home to provide notice to the DOH of the delegation prior to delegating substantial management control. The amendments provide that, in lieu of requiring compliance verification letters from other jurisdictions in which the third party management entity owns, operates, or manages facilities, the third party entity is to disclose any enforcement actions against a facility owned, operated, or managed by the entity in any jurisdiction. The amendments revise the look-back period for facilities owned, operated, or managed by a third party entity in other jurisdictions from five years to three years.

The committee amendments revise the requirements for transfers of the land or other real property on which a nursing home is located to remove a requirement for the entity acquiring the land or other real property to submit an application to the DOH. Instead, the prospective owner will be required to provide the DOH and the DHS with prior notice of the transaction, which will be published on the DOH's Internet website. The notice will include the same information that would have been required under the application process.

The committee amendments remove provisions that would have allowed the DOH to review lease, rent, and use rates charged to nursing homes and order adjustments in those rates when they exceed twice the fair market value for comparable land use agreements. The amendments instead require the DHS to review the direct care ratios for nursing homes to determine the average fair market lease, rent, and use rates for nursing homes, and grant the DHS the authority to cap lease, rent, and use rates, and to reduce the amount of a lease, rent, or use agreement that significantly exceeds the fair market rate for similar facilities in the same market area.

The committee amendments additionally revise the requirement for the DOH to monitor nursing homes to identify those that may be in financial distress or at risk of filing for bankruptcy protection to instead require nursing homes to report to the DOH when they miss certain payments related to debt service, rent, payroll, or payroll taxes. The actions the DOH can take to prevent a bankruptcy filing or facility closure will remain unchanged.

The committee amendments revise the effective date of the bill from 60 days after the date of enactment to 120 days after the date of enactment.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the Department of Health will incur an indeterminate amount of annual

costs under the bill due to increased oversight and enforcement activities related to the transfer of ownership of nursing home facilities and the sale or transfer of land or real property on which nursing home facilities are located, as well as the identification of, and provision of assistance to, nursing home facilities that may be in acute financial distress or at risk of filing for bankruptcy. Annual revenues generated from application fees imposed upon prospective new owners, as established by the department following the adoption of the bill, are indeterminate, and the OLS cannot ascertain the extent to which these fees will offset the costs of the bill.

As the bill's provisions will result in an increased number of surveys conducted by the State Commission of Investigation and an increased number of agency audits conducted by the Office of the State Auditor, the OLS also estimates that these entities will expend additional State funds on salaries, benefits, and travel within the State.

STATEMENT TO
[First Reprint]
SENATE, No. 2789

with Senate Floor Amendments
(Proposed by Senator VITALE)

ADOPTED: FEBRUARY 19, 2021

These Senate amendments revise a provision concerning approval of a transfer of ownership application to make clear that applications will not be automatically approved by changing “when” to “if.”

The Senate amendments remove a provision that would have required the State Auditor to undertake an investigation of one or more nursing homes if approved by both the Senate President and the Speaker of the General Assembly.

The Senate amendments revise a requirement for the Department of Human Services (DHS) to evaluate nursing home lease, rent, and land use agreements to determine whether the nursing home is being charged an excessive amount of rent, to instead require nursing homes to report to the Department of Health (DOH) their lease, rent, or land use rates, or the average rates, which reported rates the DOH will post on its Internet website.

The Senate amendments revise a requirement for the DOH to identify nursing homes in financial distress to provide that the DOH is to undertake this task, on an as needed basis, with the assistance of the DHS.

The Senate amendments remove language requiring the DOH to develop strategies to assist facilities that report missing a scheduled debt service, rent, payroll, or payroll tax payment.

The Senate amendments add a requirement that, if the DOH provides management support services and resources to a nursing home, those services and resources will be provided at the nursing home’s expense. The amendments add language that will alternatively allow the DOH to direct a nursing home to management support services and resources.

The Senate amendments revise a provision allowing the DOH to initiate receivership proceedings, to provide that the DOH may initiate the proceedings in situations where the nursing home does not take sufficient and timely action to avoid an impending bankruptcy or closure, and the DOH finds the bankruptcy or closure would have a significant adverse effect on the health, safety, and welfare of the residents of the nursing home or the DOH determines that bankruptcy or closure would leave the area in which the nursing home is located lacking sufficient nursing home services.

The Senate amendments revise the effective date of the bill from 120 days after the date of enactment to 180 days after the date of enactment.

The Senate amendments make a number of technical changes, including revising a reference to “public records” to read “government record” to reflect current statutory usage and making certain changes involving capitalization.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2789

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: JANUARY 29, 2021

SUMMARY

- Synopsis:** Revises licensure, operational, and reporting requirements for nursing homes.
- Type of Impact:** Increase in annual State expenditures and revenues.
- Agencies Affected:** Department of Health; Department of Human Services; State Commission of Investigation; Office of the State Auditor

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that the Department of Health (DOH) will incur an indeterminate amount of annual costs under the bill due to increased oversight and enforcement activities related to the transfer of ownership of nursing home facilities and the sale or transfer of land or real property on which nursing home facilities are located. The department will also experience indeterminate annual cost increases to identify and provide assistance to nursing home facilities that may be in acute financial distress or at risk of filing for bankruptcy. Annual revenues generated from application fees imposed upon prospective new owners, as established by the department following the adoption of the bill, are indeterminate, and the OLS cannot ascertain the extent to which these fees will offset the costs of the bill.
- The OLS concludes that the Department of Human Services (DHS) will incur costs in hiring at least one full-time equivalent staff person to make certain determinations regarding the fair market value of land agreements, as required under the bill. As real estate market analysis is outside of the department's purview, it is unlikely that existing department staff will have the qualifications to fulfill this provision.

- As the bill's provisions will result in an increased number of surveys conducted by the State Commission of Investigation (SCI) and an increased number of agency audits conducted by the Office of the State Auditor, the OLS estimates that these entities will expend additional State funds on salaries, benefits, and travel within the State.

BILL DESCRIPTION

This bill revises certain requirements concerning the licensure and operations of nursing homes. First, the bill revises a provision of current law that allows nursing homes to increase their total bed capacity by a limited amount without the need to obtain a certificate of need. The bill additionally prohibits the transfer of beds that are part of an unimplemented certificate of need to another nursing facility without an approved certificate of need.

Second, the bill requires that, prior to transferring ownership of a nursing home, the prospective new owner is to submit an application to the DOH, the requirements of which will vary depending on whether the applicant has ever owned or operated a nursing home in New Jersey and whether the application is for transfer of a controlling or non-controlling interest in the nursing home. Among other documentation, all applications are to include the transfer of ownership fee established by the DOH.

For applicants required to complete a criminal history record background check, the DOH will be required to make a determination as to whether transferring all or part of the ownership of a nursing home to the applicant would constitute a material risk to the health, safety, or welfare of residents of the nursing home. Approval of any application for transfer of ownership of a nursing home will be contingent upon a review of the applicant's history of disciplinary actions assessed by the DOH. The bill requires copies of the application to be posted on the DOH's website. All applications will be subject to public comment for a period of not less than 30 days. The DOH will be required to establish a process for acknowledging receipt of public comments.

The bill requires the DOH to review applications for transfers of ownership within 120 days. When a transfer of ownership application has been deemed acceptable, the DOH will send the applicant an approval letter. To facilitate the timely transfer of Medicare and Medicaid provider numbers, the DOH will be required to issue the new license to the applicant no later than 30 days after the date the notice of transaction is received by the DOH from the applicant. No nursing home will be authorized to delegate substantial management control of the facility to a third party entity without providing prior notice to the DOH.

Third, the bill establishes certain requirements for the sale or transfer of the land or other real property on which a nursing home is located. Prior to the sale or transfer of ownership, the prospective new owner will be required to submit an application to the DOH and the DHS that, among other things, includes the sale or transfer of real property fee established by the DOH.

The DHS will be required to utilize direct care ratio information reported by a nursing home, as required under existing law, to determine the average rates, as adjusted in each market area to account for applicable factors, for the lease, rent, or use of real property by a nursing home. The DHS will have the authority to: (1) establish rate caps charged to a nursing home for the use of real property; (2) determine whether a nursing home is paying a rate that significantly exceeds the fair market value; and (3) require that any rate that significantly exceeds the fair market value be reduced to match the average rate for similar facilities in the same market area.

Fourth, the bill requires nursing homes to report to the DOH when the nursing home misses a payment related to debt service, rent, payroll, or payroll taxes, which will serve as an indication that the nursing home may be in financial distress. The DOH will be required to develop strategies to assist facilities in financial distress to avoid bankruptcy or the need to close.

Finally, the bill provides that the DOH may request that the SCI, subject to the SCI's capacity to perform the requested investigation, or the State Auditor undertake an investigation of a nursing home or the entities owning, operating, or managing nursing homes. The bill further requires the State Auditor to undertake a review of the oversight of nursing homes by the DOH and the DHS at least once every three years.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the DOH will incur an indeterminate amount of annual costs under the bill due to increased oversight and enforcement activities related to the transfer of ownership of nursing home facilities and the sale or transfer of land or real property on which nursing home facilities are located. The department will also experience annual indeterminate cost increases to identify and provide assistance to nursing home facilities that may be in acute financial distress or at risk of filing for bankruptcy.

Currently, the department's Certificate of Need and Licensing unit enforces the State standards for licensure of health care facilities, and the Health Facility Survey and Field Operations unit enforces State licensing regulations. As such, to the extent that the provisions of the bill overlap with these units' current duties and the department can use existing resources within these units to fulfill the new requirements under the bill, costs will be minimized.

For example, this bill codifies existing regulations that require a prospective new owner to submit an application prior to transferring ownership of a nursing home. The OLS notes, however, that the bill, unlike the existing regulations, provides for varying application requirements under different scenarios. Generally, the components of the application under the bill are identical to the components under existing regulation, except that under the bill certain applicants are to include a three-year projection of profits and losses and a capital budget. As such, the OLS assumes the cost incurred by the department to process such applications will be minimal. However, there is no similar regulatory requirement regarding an application for the sale or transfer of land or real property on which nursing home facilities are located. Therefore, while the department may be able to use its current infrastructure to process these applications, costs may be incurred to hire additional staff to process the increased volume of applications.

Under the bill, the DOH is to establish application fees to be imposed on new owners, which will result in additional annual State revenues. However, the fee schedule is not known at this time so the amount of revenue to be raised is indeterminate, and the OLS cannot ascertain the extent to which the transfer of ownership fee and the sale or transfer of real property fee will offset the oversight and enforcement requirements of the bill. Currently, entities that apply for approval of ownership transfer pay a fee of \$2,500 plus \$15 per bed, while no fee is collected regarding the approval of the sale and transfer of real property.

The OLS also concludes that the DHS will incur costs in hiring staff to make certain determinations regarding the fair market value of land agreements, as required under the bill. Under the bill, the department is to adjust the value for local market factors and is authorized to establish a rate cap. As real estate market analysis is outside of the department's purview, it is

unlikely that existing department staff will have the qualifications to fulfill this provision. The OLS estimates that the department will need to hire, at a minimum, one full-time equivalent employee, resulting in a State cost of \$120,000 annually for salary, equipment, and fringe benefits, to fulfill this provision.

As the bill's provisions will result in an increased number of surveys conducted by the SCI and an increased number of agency audits conducted by the State Auditor, the OLS estimates that these entities will expend additional State funds on salaries, benefits, and travel within the State. The OLS cannot predict the magnitude of this increase, and therefore the cost of this provision, as certain surveys are to be conducted at the request of the DOH.

Section: Human Services

*Analyst: Sarah Schmidt
Senior Research Analyst*

*Approved: Thomas Koenig
Assistant Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2789

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: MARCH 26, 2021

SUMMARY

- Synopsis:** Revises licensure, operational, and reporting requirements for nursing homes.
- Type of Impact:** Increase in annual State expenditures and revenues.
- Agencies Affected:** Department of Health; Department of Human Services; State Commission of Investigation; Office of the State Auditor

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that the Department of Health (DOH) will incur an indeterminate amount of annual costs under the bill due to increased oversight and enforcement activities related to the transfer of ownership of nursing home facilities and the sale or transfer of land or real property on which nursing home facilities are located. The department will also experience indeterminate annual cost increases to identify nursing home facilities that may be in acute financial distress or at risk of filing for bankruptcy. Annual revenues generated from application fees imposed upon prospective new owners, as established by the department following the adoption of the bill, are indeterminate, and the OLS cannot ascertain the extent to which these fees will offset the costs of the bill.
- As the bill's provisions will result in an increased number of surveys conducted by the State Commission of Investigation (SCI) and an increased number of agency audits conducted by the Office of the State Auditor, the OLS estimates that these entities will expend additional State funds on salaries, benefits, and travel within the State.

BILL DESCRIPTION

This bill revises certain requirements concerning the licensure and operations of nursing homes. First, the bill revises a provision of current law that allows nursing homes to increase their total bed capacity by a limited amount without the need to obtain a certificate of need. The bill additionally prohibits the transfer of beds that are part of an unimplemented certificate of need to another nursing facility without an approved certificate of need.

Second, the bill requires that, prior to transferring ownership of a nursing home, the prospective new owner is to submit an application to the DOH, the requirements of which will vary depending on whether the applicant has ever owned or operated a nursing home in New Jersey and whether the application is for transfer of a controlling or non-controlling interest in the nursing home. Among other documentation, all applications are to include the transfer of ownership fee established by the DOH.

For applicants required to complete a criminal history record background check, the DOH will be required to make a determination as to whether transferring all or part of the ownership of a nursing home to the applicant would constitute a material risk to the health, safety, or welfare of residents of the nursing home. Approval of any application for transfer of ownership of a nursing home will be contingent upon a review of the applicant's history of disciplinary actions assessed by the DOH. The bill requires copies of the application to be posted on the DOH's website. All applications will be subject to public comment for a period of not less than 30 days. The DOH will be required to establish a process for acknowledging receipt of public comments.

The bill requires the DOH to review applications for transfers of ownership within 120 days. If a transfer of ownership application has been deemed acceptable, the DOH will send the applicant an approval letter. To facilitate the timely transfer of Medicare and Medicaid provider numbers, the DOH will be required to issue the new license to the applicant no later than 30 days after the date the notice of transaction is received by the DOH from the applicant. No nursing home will be authorized to delegate substantial management control of the facility to a third party entity without providing prior notice to the DOH.

Third, the bill establishes certain requirements for the sale or transfer of the land or other real property on which a nursing home is located. Prior to the sale or transfer of ownership, the prospective new owner will be required to submit an application to the DOH and the Department of Human Services (DHS) that, among other things, includes the sale or transfer of real property fee established by the DOH.

Fourth, the DOH is to post on its website nursing home lease, rent, or land use rates, or the average rates, as required to be reported to the department by nursing homes under the bill.

Fifth, the bill requires nursing homes to report to the DOH when the nursing home misses a payment related to debt service, rent, payroll, or payroll taxes, which the department, with the assistance of the DHS, is to utilize to identify those nursing homes that may be in financial distress. The DOH is authorized to direct a nursing home to management support services and resources; however, those services and resources will be provided at the nursing home's expense. The DOH may also initiate receivership proceedings in situations where the nursing home does not take sufficient and timely action to avoid an impending bankruptcy or closure, and the DOH finds the bankruptcy or closure would have a significant adverse effect on the health, safety, and welfare of the residents of the nursing home or the DOH determines that bankruptcy or closure would leave the area in which the nursing home is located lacking sufficient nursing home services.

Finally, the bill provides that the DOH may request that the SCI, subject to the SCI's capacity to perform the requested investigation, undertake an investigation of a nursing home or the entities owning, operating, or managing nursing homes. The bill further requires the State Auditor to undertake a review of the oversight of nursing homes by the DOH and the DHS at least once every three years.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the DOH will incur an indeterminate amount of annual costs under the bill due to increased oversight and enforcement activities related to the transfer of ownership of nursing home facilities and the sale or transfer of land or real property on which nursing home facilities are located. The department will also experience annual indeterminate cost increases to identify nursing home facilities that may be in acute financial distress or at risk of filing for bankruptcy.

Currently, the department's Certificate of Need and Licensing unit enforces the State standards for licensure of health care facilities, and the Health Facility Survey and Field Operations unit enforces State licensing regulations. As such, to the extent that the provisions of the bill overlap with these units' current duties and the department can use existing resources within these units to fulfill the new requirements under the bill, costs will be minimized.

For example, this bill codifies existing regulations that require a prospective new owner to submit an application prior to transferring ownership of a nursing home. The OLS notes, however, that the bill, unlike the existing regulations, provides for varying application requirements under different scenarios. Generally, the components of the application under the bill are identical to the components under existing regulation, except that under the bill certain applicants are to include a three-year projection of profits and losses and a capital budget. As such, the OLS assumes the cost incurred by the department to process such applications will be minimal. However, there is no similar regulatory requirement regarding an application for the sale or transfer of land or real property on which nursing home facilities are located. Therefore, while the department may be able to use its current infrastructure to process these applications, costs may be incurred to hire additional staff to process the increased volume of applications.

Under the bill, the DOH is to establish application fees to be imposed on new owners, which will result in additional annual State revenues. However, the fee schedule is not known at this time so the amount of revenue to be raised is indeterminate, and the OLS cannot ascertain the extent to which the transfer of ownership fee and the sale or transfer of real property fee will offset the oversight and enforcement requirements of the bill. Currently, entities that apply for approval of ownership transfer pay a fee of \$2,500 plus \$15 per bed, while no fee is collected regarding the approval of the sale and transfer of real property.

As the bill's provisions will result in an increased number of surveys conducted by the SCI and an increased number of agency audits conducted by the State Auditor, the OLS estimates that these entities will expend additional State funds on salaries, benefits, and travel within the State. The OLS cannot predict the magnitude of this increase for the SCI, and therefore the cost of this

provision, as such surveys are to be conducted at the request of the DOH. The OLS notes that the State Auditor will incur additional expenses to conduct reviews of the DOH and the DHS at least once every three years.

Section: Human Services

*Analyst: Sarah Schmidt
Senior Research Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Murphy Takes Action on Legislation

05/12/2021

TRENTON – Today, Governor Phil Murphy signed the following bills into law:

A-740/S-2846 (Johnson, Conaway, DeCroce/Gopal, Singleton) – Requires State agencies in awarding contracts for purchase of items that require power source to consider items powered by fuel cells

A-3384/S-3171 (McKeon/Pou) – Makes various revisions to "Uniform Fraudulent Transfer Act"; renames act to "Uniform Voidable Transactions Act"

A-4240/S-2855 (Downey, Vainieri Huttel, Houghtaling, Coughlin/Pou, Turner) – Provides for technological upgrade of application process for Supplemental Nutrition Assistance Program

A-4246/S-3175 (Verrelli, Benson, Vainieri Huttel/Pou, Corrado) – Permits expedited licensure in mental health professions for certain individuals during state of emergency or public health emergency

A-4477/S-2789 (Chiaravalloti, Conaway, Downey/Vitale, Weinberg) – Revises licensure, operational, and reporting requirements for nursing homes

ACS for A-4556 and 4145/S-2611 (Karabinchak, Zwicker, Quijano/Smith, Bateman) – Requires BPU to establish and maintain electronic public document search system on its website; requires BPU to provide certain notice of its meetings and hold quarterly public comment meetings

A-4671/S-3326 (Schaer, Swain, Tully/Ruiz, Singleton) – Requires public and local utilities to provide notice to residential customers of available relief measures during coronavirus disease 2019 pandemic

ACS for A-4805/SCS for S-3169 (Freiman, Tully, Danielsen/Pou, Gopal) – Requires certain insurers to provide summary concerning business interruption insurance

A-4806/S-3188 (Dancer, Chiaravalloti/Pou, Singleton) – Permits municipalities to authorize programs encouraging local shopping through property tax rewards; validates certain related municipal actions

A-4932/S-3066 (Johnson, Murphy, Downey/Pou) – Permits use of alternate names by limited liability partnerships

A-5222/S-3306 (Mukherji, Verrelli, Lopez/Diegnan, Turner) – Authorizes optometrists to administer immunizations against coronaviruses and influenza under certain circumstances

Governor Murphy conditionally vetoed the following bills:

A-850/S-2864 (Chiaravalloti, Karabinchak, Reynolds-Jackson/Oroho, Singleton) – **CONDITIONAL** – Establishes "Broadband Access Study Commission"

[Copy of Statement](#)

A-2116/S-2009 (Tully, Swain, Armato/Lagana) – **CONDITIONAL** – Requires State Treasurer to submit report to Legislature every six months identifying deadlines for applications for federal funds by State

agencies

Copy of Statement