

Legislative Changes Affecting Nursing Home Transfers of Ownership and Management in New Jersey Take Effect

Sweeping changes to the state regulatory process related to transfers of ownership of nursing homes have been implemented by the New Jersey Department of Health in stages during 2022, stemming from legislation that took effect on November 8, 2021. The underlying statutory amendments to the Health Care Facility Planning Act (found at N.J.S.A. 26:2H-7.25-27) were intended to tighten up oversight of nursing home ownership and management arrangements following the negative publicity affecting the industry during the COVID-19 pandemic between 2020-21. The law now includes more rigorous requirements for filing regulatory applications for ownership transfers, including disclosure of property ownership and management agreements, as well as a new public comment process and a public hearing for certain types of applications.

To date, the New Jersey Department of Health (“the Department”) has not published any regulations to implement the statutory changes, but is planning to issue interpretive guidance in the near future. The legislation left many interpretive details to the Department which have evolved in recent months. The key changes to the transfer of ownership process vary based upon whether a controlling or minority interest is being acquired, and on whether or not the purchaser currently holds ownership interests in New Jersey health care facilities. Generally, these changes apply only to nursing homes licensed by the Department as long term care facilities, not assisted living facilities, adult medical day care centers, acute care facilities, or any other type of health care facility.

The key new application requirements can be summarized as follows:

- **Purchase of a controlling (majority) interest in a nursing home by individuals or entities who presently do not hold any current ownership or operational interests in a New Jersey health care facility (not only a nursing home).** In these types of applications, which have the most stringent requirements, each individual applicant must undergo a criminal background investigation through the Department, including fingerprinting. Applicants must also submit 3-year financial documentation for all facilities it owns and operates a 3-year prospective capital budget, and a 3-year projection of profits and losses. An organizational chart with all ownership interests and other summary material must be submitted, which the Department will post online for a 30-day public comment period. Please note that it is the responsibility of the applicant to redact all sensitive information contained in the summary materials before they are publicly posted by the Department. In addition, different from all other types of applications, the applicant must arrange for and hold a public hearing in the county where the facility is located before the Department will issue an approval of the application.

- **Purchase of a majority interest in a nursing home by individuals or entities who presently hold current ownership or operational interests in New Jersey health care facilities.** In addition to currently-required application materials, applicants in this category, must now also submit owner-certified financial statements for the past calendar year for all New Jersey facilities that they own or operate. In addition, as above, the application must include a 3-year projection of profits and losses, a capital budget, and any pre- and post-closing leases or management agreements. An organizational chart with all ownership interests and other summary material is required, and a summary of the application must be prepared, which will be posted for a 30-day public comment period on the Department’s website. There is no public hearing required in this category of applications.

- **Purchase of a minority interest in a nursing home by individuals who presently do not hold any current ownership in New Jersey health care facilities.** Any ownership interest acquisition creating greater than a 5% interest, which has been lowered from the previous threshold of 10%, requires

a transfer of ownership application. In this category, individual applicants must undergo a criminal background investigation and provide all track record information for the prior 3 years for out-of-state facilities they own or operate. There is no public hearing requirement for minority ownership changes.

- **Purchase of a minority interest in a nursing home by individuals who presently do hold any current ownership in New Jersey health care facilities.** Ownership changes creating greater than a 5% interest, but not a controlling interest, must be submitted for review. These individual applicants must provide all track record information for the prior 3 years for any out-of-state facilities they own or operate. No criminal background investigation or public hearings are required.

Property Sales of Nursing Homes

For the first time in New Jersey, nursing home property sales agreements must be disclosed and submitted to the Department for review. The law does not, however, state that such property sale agreements must be approved in advance of their taking effect. Copies of the purchase agreement and any leases must be of nursing home facilities must be submitted with the transfer of ownership application. The statute requires that the purchaser must attest that any related lease payments are at fair market value, although this requirement has not been implemented, to date, by the Department.

Management Agreements

The new statute now requires the submission of all nursing home management agreements in advance of their taking effect, which historically were only required to be identified on annual license applications. The statute did not address the substantive provisions of management agreements, other than stipulating that a management agreement cannot delegate “substantial management control” to a manager. Nursing home owners or transfer of ownership applicants must submit copies of the executed management agreement, accompanied by disclosure of all related owners, an ownership chart, and disclosure of all “track record” information related to facilities owned by the management company.

Timeframe for the Department’s Review and Approval of Transfer of Ownership Applications

While the legislation increased oversight in many areas, it also incorporated a 120-day limit on transfer of ownership application review and approval by the Department. This limitation has not been implemented to date, but it has been noted that the date the application is deemed complete will be considered the start of this 4-month review process. In a related effort to streamline the application process, the Department has created a central intake process for transfer of ownership applications, and all applications must now be filed electronically to a central email inbox (CNLApps@doh.nj.gov). The Department has also encouraged the use of the DOH payment portal to make the process of paying filing fees easier and accessible at https://www.state.nj.us/health/healthfacilities/ltc_epay.shtml. The Department has begun posting applications online, at <https://nj.gov/health/healthfacilities/certificate-needed/ltc-transfer-ownership/> where public comments may be submitted.

If you have any questions regarding New Jersey nursing home transfers of ownership or management changes, please contact Robert Fogg at rfogg@archerlaw.com or 609-580-3702 or Shloka Joshi at sjoshi@archerlaw.com or 267-817-9248.

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