

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

Essential Principles for Nursing Home Licensing Requirements

Following are essential principles for government licensing requirements which, we believe, provide a baseline framework for improving accountability and integrity in the nursing home licensure process. The principles incorporate some of the promising practices identified in our report, [Meaningful Safeguards: Promising Practices & Recommendations for Evaluating Nursing Home Owners](#), as well as practical ideas to address known and longstanding shortcomings in the effectiveness of current government policies. Please note that these principles are a starting point for developing or improving laws and regulations, not a comprehensive model for licensing requirements.

Policymakers are encouraged to use this language as a template for developing meaningful nursing home requirements on the state and federal levels. Consumers and the general public are encouraged to call on their state and federal leaders to adopt these principles to ensure both nursing home safety and the integrity of the public programs (Medicare and Medicaid), which pay for a majority of nursing home services.

In situations where changing laws or regulations is impractical, we encourage state and federal agencies to adopt these principles, to the greatest extent possible, to address growing concerns about inadequately vetted nursing home providers.

The Long Term Care Community Coalition (LTCCC) is a nonprofit, nonpartisan organization dedicated to improving quality of care, quality of life, and dignity for elderly and disabled people in nursing homes, assisted living, and other residential care settings. Please visit our website for more information on our work; the latest data on nursing home staffing and quality; and free resources for consumers and other stakeholders on residents' rights, dementia care, and more.

www.NursingHome411.org

Any person acting individually or jointly with other persons to build, own, establish, or operate a nursing home shall submit an application for licensure to the state's Department of Health. No individuals or entities may operate a nursing home without a license approved by the Department. Licenses must be renewed annually. Current licensees are subject to the same requirements as first-time applicants. The Department shall deny licenses to any applicant who has not timely submitted a complete application and provided the Department with additional information, as requested.

A. Application. The application shall be under oath. The submission of false or misleading information shall be a felony under [applicable state law]. The application shall contain the following information:

1. The identities of any individuals or entities having a direct or indirect ownership interest whatsoever in the facility, whether the interest is in the profits, land, or building.
2. The identities of any individuals or entities having a direct or indirect interest in the management of the facility or the provision of services at the facility.
3. The name and location of the facility. Every facility shall be designated by a permanent and distinctive name. The name shall not be changed without prior written notice to and approval from the Department. A separate license shall be required for each facility when more than one facility is operated under the same ownership.
4. A list of every licensed facility of any state (including the District of Columbia) or territory in which the applicant has or had any percentage of interest in the ownership, management, or real property of that facility. Entities must disclose any facility in which members (as individuals or in connection with a previous entity) have or previously had any percentage of interest in the ownership, management, or real property of that facility.
5. In the case of a change of ownership, the disclosure of any relationship or connection between the old licensee and the new licensee, and between the old operator and the new operator, whether direct or indirect.

B. Financial Capacity. The Department shall deny a license to any applicant who fails to demonstrate a financial capacity to operate a nursing home.

1. Applicants must submit a detailed budget for three years of operations, prepared in accordance with generally accepted accounting principles. Applicants must submit evidence of access to sufficient capital required to operate the facility in accordance with the budget and the facility assessment, as required by 42 C.F.R. § 483.70(e).
2. Applicants must disclose any financial failures directly or indirectly involving any individuals or entities identified in the application that resulted in a bankruptcy, receivership, assignment, debt consolidation/restructuring, mortgage foreclosure, cooperative integrity agreement, sale, or closure of a nursing facility, the land it sits on, or the building in which it is located.
3. Applicants must disclose the identities of any individuals or entities having an interest in the mortgage, note, deed of trust, or other obligation secured in

whole or in part by the equipment used in the facility, or by land on which or building in which the facility is located.

4. If the Department suspects or determines that a licensee is insolvent or shows a tendency towards insolvency, the Department shall have the right to request additional financial information, data, and records. Licensees must submit the requested materials within ten calendar days of receiving the Department's written request.
 5. Any financial information, data, or records submitted to the Department shall be open for inspection and may be released in any judicial or administrative proceeding brought under the federal Nursing Home Reform law.
 6. Applicants must disclose all vendors providing services at the nursing home. Identified vendors shall be requested to submit letters identifying whether the nursing home is paying bills on-time or not at all.
 7. Applicant must purchase and maintain a surety bond for each facility operated in the state. The bond value must be a minimum of \$1,000,000 per 100 certified beds.
- C. Leases or Subleases.** Applicants must submit a copy of any executed contract conveying the legal right to the facility premises, including leases, subleases, rental agreements, deeds, and any amendments to those contracts within 30 days of the effective date. Applicants must disclose the identities of any individuals or entities having an interest in the lease or sublease of the land on which or building in which the facility is located. The Department shall deny a license to any applicant whose lease or sublease is above fair market value.
- D. Character and Fitness.** Applicants must submit information regarding their character, experience, competency, and standing in the community. The Department shall deny a license to any applicant who has:
1. Falsified any information, data, or record required by the application.
 2. Been convicted of any crime involving physical, sexual, mental, or verbal abuse or neglect.
 3. Been convicted of any crime involving the misappropriation of property or financial abuse.
 4. Permitted, aided, or abetted in the commission of any illegal act against a nursing home resident.
 5. Demonstrated an inability or willingness to fully comply with state and federal requirements.

6. Had any direct or indirect ownership interest in a facility cited for five or more actual harm deficiencies or three or more immediate jeopardy deficiencies (or their state equivalents) in the past three survey cycles.
7. Been involuntarily terminated from the Medicare and/or Medicaid programs.
8. Engaged in activities that the state determines are detrimental to health, safety, and well-being of nursing home residents.

E. Management. Each applicant shall provide an official copy of any executed management contracts between the applicant and the individual or entity managing the facility or providing nursing home services. Applicants must demonstrate that the individuals or entities managing a facility have the education, training, and experience to provide for the health, safety, and wellbeing of residents.

1. The Department must receive an organizational chart showing the relationship (e.g., common ownership) between the applicant or licensee, contractor, and all related organizations.
2. Applicants and licensees must notify the Department of any changes to a management contract within 60 days of the effective date of those changes by submitting the new or revised management contracts. The applicant or licensee must notify the residents and their representatives thirty days before the effective date of a new or revised management agreement.
3. Applicants and licensees may not give the manager responsibilities that are so extensive that the licensee is effectively relieved of responsibilities for the daily operations and provisions of services at the facility. If an applicant has done so, the application shall be denied. If a licensee has done so, the Department shall determine that a change of ownership has occurred.

F. Change of Ownership. Licenses cannot be transferred. A license is issued to the individual(s) or entities named in the application and for the facility identified in the application. The license immediately becomes void and must be returned to the Department when there has been a change of ownership. Applicants including after the following events have occurred:

1. The sale of the facility's title;
2. The lease or sublease of the land on which or the building in which the facility is located; and
3. The licensee has given the manager of the facility extensive responsibilities for the daily operations and provisions of services at the facility.

Applicants must notify the Department of their intent to acquire a nursing home at least 90 calendar days before the change of ownership. Because nursing homes owners may not operate a facility without a license, the Department shall either approve or deny an application before the effective date of change of ownership.

Applicants must publish notice of their intent to acquire a nursing home 90 days before the effective date of the change of ownership. The notice must include the names and address of any individual or entity with a prospective ownership interest in the facility. The notice must describe any planned changes to the facility's operations. The notice must indicate that any individual may request a public hearing or submit comments to the Department on the change of ownership within 21 calendar days of the licensee's notification.

A copy of the notice must be provided to the following:

- Each resident and, if applicable, the resident's representative;
- The facility's resident council;
- The facility's family council;
- Each staff member of the facility;
- The Office of the State Long-Term Care Ombudsman;
- The Office of the Local Long-Term Care Ombudsman;
- The members of the General Court who represent the city or town where the facility is located;
- 501(c)(3) Citizen advocacy Organizations the support nursing home residents in the city or town where the facility is located;
- A representative of the local officials of the city or town where the facility is located.

If requested, the Department shall conduct a hearing no later than 45 days before the effective date of the change of ownership. The Department shall provide notice of the public hearing at least 14 calendar days before the date of the hearing. The notice must include the date, time, and location of the public hearing. The Department shall make special accommodations for individuals with disabilities.

G. Criminal Liability. Failure to adhere to the change of ownership requirements shall be a felony under [applicable state and federal law] for both individuals and entities.

Conclusion

Federal and state policymakers must take steps to protect nursing home residents from the ongoing cycle of toxic ownership within the nursing home industry. Given that Medicare certification depends on state licensure, states have a unique opportunity to impose meaningful requirements on individuals and entities owning or operating a nursing home. The

Long Term Care Community Coalition encourages policymakers to use our findings and the baseline principles to improve licensing requirements for the welfare of current and future residents and the financial integrity of the nursing home system. For more information about nursing home ownership and quality, please visit www.NursingHome411.org.

Note: Improving licensing and certification requirements is only one approach to holding nursing home owners and operators accountable. **Additional measures must be taken to ensure that public funds are being used effectively and residents are receiving quality care.** For example, LTCCC also supports the implementation of a medical loss ratio in nursing homes. To learn more this measure, please read our Issue Alert, "[Medical Loss Ratios for Nursing Homes: Protecting Residents and Public Funds.](#)"