

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

Meaningful Safeguards: Promising Practices & Recommendations for Evaluating Nursing Home Owners



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ABOUT THE LONG TERM CARE COMMUNITY COALITION

The Long Term Care Community Coalition (LTCCC) is a non-profit, non-partisan organization dedicated to improving care in nursing homes and other residential care settings. Please visit our website, www.NursingHome411.org, for information on nursing home quality, staffing, and safety, as well as for a range of resources.

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Introduction

Substandard care, abuse, and neglect are longstanding concerns for nursing home residents. Decades of federal reports have documented widespread and persistent issues in nursing homes nationwide, such as inappropriate antipsychotic drug use.¹ However, in recent years, it has become increasingly evident that too many nursing home residents are also at risk of experiencing poor care because of fundamental problems in the management, ownership, or financing arrangements under which an increasing number of nursing homes are operating.

The growing sophistication of the nursing home industry has enabled some owners to leverage and direct assets in a manner that maximizes profits without meaningful accountability for nursing home quality. This problem is evidenced by high-profile cases of nursing home chain closures and bankruptcies that have raised serious questions about how state and federal governments evaluate prospective nursing home operators for purposes of licensure and certification. Following are two of the most notable examples from the last two years:

The Dramatic Collapse of Skyline Healthcare

Beginning in 2015, Skyline Healthcare began purchasing nursing homes in states across the country. By 2017, the nursing home chain was operating more than 100 nursing homes. When asked during a deposition how many nursing homes in total Skyline operated, owner Joseph Schwartz confirmed it was more than five but could not recall whether it was more than 100.²

Throughout this rapid expansion, Skyline was operating out of a tiny office above a New Jersey pizzeria.

Unfortunately for Skyline's more than 7,000 nursing home residents, the nursing home chain started to collapse in 2018. As an NBC News investigation described "[m]any homes ran out of money. Others were shut down over neglect documented in government records. Fourteen homes were forced to close permanently, displacing more than 900 residents to new facilities, sometimes hours away."³ Former Skyline staff told NBC News that "Schwartz would bring in a vendor, let the bills stack up, then find another vendor and do the same thing again."⁴ States eventually had to take

"Staff were told that disposable briefs would be rationed to two per patient per shift, instead of as needed, meaning patients were left to languish in their own body waste."

-NBC News (2019)

¹ See, e.g., *Medicare Atypical Antipsychotic Drug Claims for Elderly Nursing Home Residents*, HHS OIG (May 2011), <https://oig.hhs.gov/oei/reports/oei-07-08-00150.pdf>.

² Laura Strickler, Stephanie Gosk & Shelby Hanssen, *A nursing home chain grows too fast and collapses, and elderly and disabled residents pay the price*, NBC News (Jul. 19, 2019), <https://www.nbcnews.com/health/aging/nursing-home-chain-grows-too-fast-collapses-elderly-disabled-residents-n1025381>.

³ *Id.*

⁴ *Id.*

control of facilities, seeking court-approved receiverships to ensure that residents continued receiving basic necessities, such as food and medicine.⁵

Skyline leased many of its facilities from Golden Living Centers, another nursing home chain that was sued by the Pennsylvania Attorney General in 2015 “for failing to provide the quality of care which it promised to seniors.”⁶ A spokesperson for Skyline stated that these leases played a role in the chain’s problems.⁷ Nevertheless, as *The Kansas City Star* reported, “[a]nalysts and industry insiders say state regulators should have known Skyline was biting off more than it could chew”⁸

The Shocking Bankruptcy of HCR ManorCare

Sadly, Skyline’s collapse is not an isolated case. The second largest nursing home chain in the country, HCR ManorCare, filed for bankruptcy in 2018 because of unpaid rent. The chain was previously acquired by the private equity firm Carlyle Group in 2007 for approximately \$6.1 billion.⁹ In 2011, Carlyle Group sold the underlying real estate to an investment firm for \$6.1 billion, “an amount that roughly matched the price that the private equity firm had paid to buy the company just four years prior.”¹⁰

The result of the sale meant that the nursing home chain was forced to pay the new real estate investment firm rent that amounted to \$472 million annually, including a 3.5 percent yearly increase plus property taxes, insurance, and upkeep. According to *The Washington Post*, “[t]aking the money out of ManorCare constrained company finances. Shortly after the maneuver, the company announced hundreds of layoffs.” *The Post* indicates that residents ultimately paid the biggest price in the years preceding the bankruptcy, as the chain

“One man had been dosed with so many opioids that he had to be rushed to a hospital, according to the inspection reports.”

-*The Washington Post* (2018)

⁵ *See id.* (“With residents running out of food, several states began to take extraordinary measures. Starting in March 2018, Nebraska and then Pennsylvania assumed control of some Skyline facilities and assigned third parties to run them. South Dakota was next.”).

⁶ *PA Supreme Court Ruling: Attorney General’s Lawsuit to Protect Seniors in Nursing Homes is Reinstated*, Office of the Attorney General, Commonwealth of Pennsylvania (Sept. 28, 2018), <https://www.attorneygeneral.gov/taking-action/press-releases/pa-supreme-court-ruling-attorney-generals-lawsuit-to-protect-seniors-in-nursing-homes-is-reinstated/>.

⁷ Maggie Flynn, *Report: Troubled Former Golden Living Facilities Highlight Oversight Issues*, Skilled Nursing News, (Nov. 18, 2018), <https://skillednursingnews.com/2018/11/report-former-golden-living-facilities-highlight-oversight-issues-pennsylvania/>.

⁸ Kelsey Ryan & Andy Marso, *How a small company above a N.J. pizza parlor put Kansas nursing home residents at risk*, *The Kansas City Star* (Apr. 15, 2018), <https://www.kansascity.com/news/business/health-care/article208521454.html>.

⁹ Peter Whoriskey & Dan Keating, *Overdoses, bedsores, broken bones: What happened when a private-equity firm sought to care for society’s most vulnerable*, *The Washington Post* (Nov. 25, 2018), https://www.washingtonpost.com/business/economy/opioid-overdoses-bedsores-and-broken-bones-what-happened-when-a-private-equity-firm-sought-profits-in-caring-for-societys-most-vulnerable/2018/11/25/09089a4a-ed14-11e8-baac-2a674e91502b_story.html?arc404=true.

¹⁰ *Id.*

exposed its roughly 25,000 residents to increasing health risks. *The Post's* analysis finds that the number of violations rose “about three times faster than at other U.S. nursing homes”¹¹

Purpose and Framework of This Report

Skyline Healthcare’s collapse and HCR ManorCare’s bankruptcy have put an increased focus on the ability of the nursing home industry to prioritize profits over resident care. The failure of federal and state governments to protect nursing home residents from bad actors who are entering the industry has raised serious questions about the standards by which governments evaluate potential nursing home owners and operators. Based on these concerns, the Long Term Care Community Coalition (LTCCC) undertook an examination of state nursing home licensing requirements and federal Medicare certification requirements.

The purpose of this report is to identify promising practices among states for evaluating a current or potential nursing home owner’s ability to operate a facility that meets or exceeds federal safety standards. Based on our assessment of these state requirements, and knowledge of the ramifications of ownership integrity on nursing home quality and safety, we offer essential principles for state or federal licensing requirements. Our organization encourages state and federal policymakers to use our findings and recommendations to advance meaningful criteria for ensuring that nursing home owners comply with quality standards and effectively use public funds, which pay for the majority of nursing home care.

NOTE: This report does not examine whether states are adequately enforcing their licensing requirements. The purpose of this report is to identify promising practices that, if properly implemented and enforced, should protect nursing home residents from unfit owners.

For ease of use and reference, the report is divided into four sections:

1. A brief background on federal certification requirements;
2. An overview of promising state practices for evaluating a nursing home owner’s application for licensure;
3. Key highlights of promising state practices; and
4. LTCCC’s essential principles for improving government licensing requirements.

Background on Federal Certification

Medicare and Medicaid certified nursing homes receive public funds as reimbursement for providing care to residents enrolled in those programs. Given that the Medicare program pays high rates for resident care and the standards are identical to those

¹¹ *Id.*

required for Medicaid certification, virtually all nursing homes apply¹² for Medicare certification.

Under the **Social Security Act**, “any provider of services” is qualified to participate and be eligible for Medicare reimbursement if it enters into an agreement with the Secretary of the U.S. Department of Health and Human Services (HHS).¹³ However, the Secretary may refuse to enter into (renew or terminate) such agreements if, among other conditions, a provider fails to substantially comply with the federal **Nursing Home Reform Law**, which sets out the standards for resident care.¹⁴

Through agreements with the HHS Secretary, states carry out the actual Medicare certification process.¹⁵ Nevertheless, while certification may be a function of state survey agencies, Medicare certification recommendations must be submitted to the federal Centers for Medicare & Medicaid Services (CMS) regional offices for a final determination. According to CMS’s State Operations Manual, the regional office “is ultimately responsible for deciding whether a provider/supplier may participate in the Medicare program”¹⁶

Despite both the federal government’s ability to deny Medicare certification to bad actors and the HHS Secretary’s statutory duty to protect residents and public funds, the government continues to demonstrate little appetite to intervene in the industry’s business.

Additionally, under the Reform Law, the HHS Secretary has the duty to protect both resident wellbeing and taxpayer dollars from bad actors in the nursing home industry. Specifically, the Reform Law states:

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in skilled nursing facilities under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and

¹² Nursing homes seeking Medicare certification must file an application disclosing certain provider information, including the following: **(1)** identifying information, **(2)** state license information, **(3)** adverse legal actions/convictions, as well as **(4)** ownership interest and managing control information. The application also requires additional information in cases involving a change in ownership, acquisitions, mergers, and consolidations. See <https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/downloads/cms855a.pdf>.

¹³ 42 U.S.C. § 1395cc(a)(1).

¹⁴ 42 U.S.C. § 1395cc(b).

¹⁵ 42 U.S.C. § 1395aa. If there is a change of ownership and the new applicant has rejected assignment of the existing Medicare agreement, then the new applicant will be considered “a new applicant seeking initial certification” See State Operations Manual (SOM), Ch. 2, § 2000 (Rev. 193, 09-20-19), <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c02.pdf> (meaning that facilities will be subject to new health inspections to ensure compliance with the federal standards of care).

¹⁶ State Operations Manual (SOM), Ch. 2, § 2000 (Rev. 193, 09-20-19), <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c02.pdf>.

rights of residents and to promote the effective and efficient use of public moneys.¹⁷

Despite both the federal government’s ability to deny Medicare certification to bad actors and the HHS Secretary’s statutory duty to protect residents and public funds, the government continues to demonstrate little willingness for industry intervention. In fact, a CMS spokesperson told NBC News in the wake of Skyline’s collapse that CMS is not responsible for assessing an owner’s finances, stating that “CMS authority over nursing homes relates to compliance with health and safety requirements, not their well-being.”¹⁸

Promising Practices

In the absence of meaningful federal oversight of nursing home ownership, it is increasingly important for states to implement and enforce strong requirements for nursing home licensure. Under the Reform Law, a nursing home participating in the Medicare and Medicaid programs must be “licensed under applicable State and local law.”¹⁹ Given that nursing homes’ financial viability depends on these public programs, states have significant power to protect residents from bad actors by imposing meaningful requirements for obtaining a license and, thus, Medicare certification.

Given that nursing homes’ financial viability depends on these public programs, states have significant power to protect residents from bad actors by imposing meaningful requirements for obtaining a license and, thus, Medicare certification.

Following are key highlights of promising practices we have identified from states’ licensing requirements related to determining the character and financial capacity of prospective or existing nursing home owners. In our view, these requirements have the potential to make it more difficult for bad actors to obtain and maintain state licensure and, thereby, federal certification. Nevertheless, without meaningful enforcement, bad actors may still find a way to enter and operate within the nursing home industry (as the case may be in the states identified below).

Alabama

Key Highlight(s)

- Applicants may be denied a license if they do not have adequate resources, ability, or intent to comply with the state’s health care requirements.

¹⁷ 42 U.S.C. § 1395i–3 (f)(1). The Medicaid statute imposes a similar duty on the Secretary. 42 U.S.C. § 1396r(f)(1).

¹⁸ Laura Strickler et al., *A nursing home chain grows too fast and collapses, and elderly and disabled residents pay the price*, NBC News (Jul. 19, 2019), <https://www.nbcnews.com/health/aging/nursing-home-chain-grows-too-fast-collapses-elderly-disabled-residents-n1025381>.

¹⁹ 42 U.S.C. § 1395i–3(d)(2)(A).

- Applicants may be denied if they have been convicted of fraud or a felony relating to abuse, misappropriation of property, or financial abuse.
 - A license may be revoked if the owner engages in activities that the state determines to be detrimental to the welfare of residents.
 - A new license is required when there has been a change of ownership, including the sale of the facility's title or the lease of the facility's real estate.
- **Reference:** [Alabama Administrative Code](#).

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California

Key Highlight(s)

- Applicants must submit satisfactory evidence of their reputable and responsible character. Entities must likewise submit evidence as it relates to the members and shareholders, as well as the person in charge of the nursing home. The state must consider past patterns or practices of violating state and federal laws and regulations.
- Applicants may be denied licensure if they have been convicted of a crime or knowingly made a false statement of fact.

→ **References:** [California Health and Safety Code](#).

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Note: According to the California Advocates for Nursing Home Reform ([CANHR](#)), the state is allowing nursing home owners and management companies to operate facilities without first obtaining a license. As CANHR and other organizations previously noted in [comments](#) to the state's health department, "[o]nce an unvetted operator takes over a nursing home, it is nearly impossible to remove the operator without exposing residents to turmoil, harm or the possibility the nursing home will close or be sold to another unfit operator."

Solutions: CANHR is advocating for the state to promulgate regulations that establish an effective prior approval process for vetting applicants *before* they are allowed to purchase a facility. CANHR is also advocating for the state to establish a system for public input on licensure decisions and changes of ownership.

Delaware

Key Highlight(s)

- Applicants must disclose any substandard surveys or the imposition of any temporary management, immediate jeopardy violations, civil money penalties, or ban on admissions in the preceding five years.
- Applicants must disclose a list of all facilities they previously or currently manage, own, or control in the preceding five years.
- Applicants must disclose any information regarding bankruptcy proceedings, civil action relating to a facility's debt, and names of facilities under state review for potential financial incapacity.

→ **Reference:** [Delaware Administrative Code](#).

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Illinois

Key Highlight(s)

- The inclusion of false or misleading information in the license application is considered a crime.
- Applicants must submit financial statements to provide evidence of their financial condition.
- Applicants/licensees must include lease and management agreements between the nursing home owner and the real estate owner in the application. Applicants must notify the state of any change within 30 days.
- The license cannot be transferred and automatically becomes void if the facility is sold or leased.

→ **Reference:** [Illinois Administrative Code \(Sections 300.120, 300.13\)](#).

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Kansas

Key Highlight(s)

- Applicants must submit information detailing the projected budget for the first 12 months of operations, including evidence of access to sufficient working capital (cash on deposit, line of credit, equity, or a combination thereof) required to operate the nursing home in accordance with the budget.
- Applicants must list each current or previously owned facility in which the applicant has or had any percentage of ownership in the operations or real estate.

→ **Reference:** [Kansas Statute](#).

Note: David E. Kingsley, PhD, a former board member of the Kansas Advocates for Better Care ([KABC](#)), has expressed concerns about requiring applicants to submit a detailed budget for the first 12 months of operations. According to Dr. Kingsley, private equity firms' access to vast amounts of capital means that these types of applicants will likely have no trouble meeting the requirement on their way to extracting value from nursing homes. He believes making minor changes and non-fixes create the illusion that action is being taken against social injustice.

Solution: Dr. Kingsley advocates for real transparency, providing the Stop Wall Street Looting Act of 2019 ([S. 2155](#)) as an example of the type of legislation needed.

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Massachusetts

Key Highlight(s)

- Applicants must publish notice of their intent to establish or transfer the ownership of a nursing home, which, among other information, must contain information about requesting a public hearing upon petition by any group of ten adults and submitting written comments. The notice must be provided to ombudsmen and certain government officials. For transfers of ownership, the notice of public hearings must be given to those same individuals, plus nursing home residents, representatives and others.
- Applicants' responsibility and suitability is based on their criminal history, financial capacity, and history of compliance with the nursing home requirements.
- Applicants must submit documentation regarding three years of projected profit and losses (with assumptions of payer mix, patient days, and daily rates), and projected three years' capital budget.
- The Commissioner may order a limit or complete prohibition on new resident admissions for failure to comply with the requirements.
- Operating a nursing home without a license is a violation of law and punishable by a fine for the first offense and a fine or up to two years imprisonment for the second offense.

→ **References:** [Code of Massachusetts Regulations](#); [Suitability Application Disclosure Form](#)

Note: The health department has 90 days to complete its suitability review for transfer of ownership licensure. The department may extend this period by a maximum of 30 days with the consent of the applicant. However, if the department fails to notify the applicant in writing of its decision within the allotted time period, the applicant is automatically deemed “responsible and suitable.” The Massachusetts Advocates for Nursing Home Reform ([MANHR](#)) objects to this automatic approval which unnecessarily and dangerously expedites the application process, noting that time constraints should not be the determining factor of an applicant’s suitability for operating a nursing home.

Recommendation: MANHR is advocating for the health department to have ample time to review an applicant’s or licensee’s suitability, especially given the importance of financial review and verification from other states. MANHR is calling for the state to develop a mechanism for giving the department additional review time, if needed, without the possibility of automatically deeming an applicant responsible and suitable.

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Missouri

Key Highlight(s)

- Applicants must disclose all long-term facilities they own or operate.
- Applicants must provide a copy of management contracts.
- Applicants must provide a copy of any lease, sublease, rental agreements, or deeds.
- Applicants must disclose the name and nature of any other businesses operating on the facility’s premises.
- Applicants must submit documentation demonstrating financial capacity to operate the facility.
- Applicants and licensees that appear insolvent may be required to submit additional financial information.
- Financial information is open to inspection and can be released in any judicial or administrative proceeding brought under the federal Nursing Home Reform Law, and as ordered by court.

→ **Reference:** [Missouri Code of State Regulations](#).

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New Hampshire

Key Highlight(s)

- The state must deny licenses to applicants who have been convicted of a felony, fraud, exploitation, sexual assault, abuse and neglect, or any other violent crime.
- The state must deny licenses to applicants if there has been a finding of assault, fraud, abuse, neglect, or exploitation.
- The state must deny licenses to applicants who pose a threat to the health, safety, or well-being of residents.
- The nursing home must submit a new application and obtain a new or revised license before operating a facility in cases where there has been a change of ownership.

→ **Reference:** [New Hampshire Code of Administrative Rules.](#)

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New Mexico

Key Highlight(s)

- Applicants must provide information on the identities of all persons or businesses having either direct or indirect authority over the management or policies of the facility.
- Applicants must provide information regarding the identities of all persons or business with a direct or indirect five percent ownership interest in the facility, including profits, land, or building.
- Applicants must identify creditors who hold a security interest.
- When there is a change of ownership, applicants must disclose any direct or indirect relationship between an old licensee and the new licensee, as well as between any owner and operator of the new licensee.
- New applicants must submit evidence establishing that they have sufficient resources to operate the facility for a period of six months.

→ **Reference:** [New Mexico Administrative Code.](#)

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New York

Key Highlights

- Applicants must provide information and data with reference to their character, experience, competency, and standing in the community.
- Applicants must provide information regarding the financial resources and the sources of future revenue of the facility.

- Applicants must disclose whether any person has a direct or indirect interest in the land on which the facility sits or building in which the facility is located.
 - Applicants must disclose whether any person has a direct or indirect interest in a mortgage, note, deed of trust, or other obligation secured by the facility’s real estate.
 - Applicants must disclose whether any person has a direct or indirect interest as a lessor or lessee in any lease or sublease of the facility’s land or building.
- **Reference:** [New York Codes, Rules, and Regulations](#).

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Ohio

Key Highlight(s)

- Applicants must submit a statement of financial solvency that demonstrates a financial ability to staff, equip, and operate the nursing, and demonstrate that there is sufficient capital or financial reserves to cover at least four months’ operation.
- **Reference:** [Ohio Administrative Code](#).

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Oklahoma

Key Highlight(s)

- The owner of the facility must be a co-applicant if he or she retains some rights in the operations of the facility.
- **Reference:** [Oklahoma Administrative Code](#).

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Utah

Key Highlight(s)

- Applicants must not have had a previous interest in a facility that has been in receivership, closed as a result of a settlement agreement from a decertification action or license revocation, or involuntarily terminated from the Medicare and Medicaid programs within the past five years.
 - Applicants must not have been convicted of patient abuse, neglect or exploitation.
- **References:** [Utah Administrative Code](#).

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Washington

Key Highlight(s)

- A licensee cannot give away responsibilities over a facility so extensively that he or she no longer has responsibilities over daily operations and services.

→ **Reference:** [Washington Administrative Code](#).

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Wisconsin

Key Highlight(s)

- Applicants must disclose direct or indirect involvement in any financial failures that resulted in a debt consolidation, restructuring, mortgage foreclosure, bankruptcy, receivership, assignment, or closure.
- Applicants must provide information demonstrating that individuals directly managing a facility have the education, training, or experience to provide for the health, safety, and welfare of residents.
- Applicants must demonstrate that they have sufficient resources to operate a facility for at least six months.
- Applicants must be determined to be fit and qualified to be a licensee.

→ **Reference:** [Wisconsin Administrative Code](#).

Summary of Promising Practices

Following is a summary of the promising practices, identified by LTCCC in the previous section, for evaluating a nursing home owner's application for state licensure:

- **Ownership Disclosure.** Applicants must disclose the identities of individuals or entities having any interests in the facility's operation or management. Applicants must also disclose current or previous interest in any other nursing home nationwide.
- **Financial Capacity and Integrity.** Applicants must submit financial statements to demonstrate adequate resources for operating a nursing home. Applicants must disclose any ownership of a previous facility that was subject to an adverse financial proceeding. Applicants must also disclose if any individuals or entities have an interest in the land on which the nursing home sits or the building in which the facility is located. Any financial information, data, or records submitted in the course of the application process will be may be available in legal proceedings involving the Nursing Home Reform Law.

- Character and Fitness.** Applicants must submit information regarding their character, experience, competency, and standing in the community. This information includes criminal convictions, terminations from the Medicare and Medicaid programs, and activities detrimental to nursing home residents.
- Major Contracting.** Applicants must submit a copy of any executed leases or subleases. Applicants must disclose the identities of any individuals or entities having an interest in the lease or sublease. Applicants must also provide a copy of any executed management contracts. Applicants must demonstrate that the individuals or entities managing the facilities have the competency to provide for and protect residents.
- Change of Ownership.** Licenses cannot be transferred. Licenses become void upon a change of ownership, including when the facility's title has been sold or the facility's building or land has been leased. Nursing homes must provide notice when establishing or transferring ownership and the state health department may be required to conduct public hearings.

PROMISING PRACTICES

1. Ownership Disclosure
2. Financial Capacity
3. Character & Fitness
4. Contracting & Leases
5. Change of Ownership

Essential Principles for Government 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, 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.

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, cooperate 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.](#)"