
SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

BILL NO: AB 1502
AUTHOR: Muratsuchi and Wood
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SUBJECT: Freestanding skilled nursing facilities

SUMMARY: Revises the licensure application and approval process for skilled nursing facilities (SNFs), and prohibits any person, including an applicant for licensure, or change of ownership, or change of management, from acquiring, either directly or indirectly, an ownership interest in a skilled nursing facility, or from operating, establishing, managing, conducting, or maintaining a SNF, prior to review, approval, and issuance of a license by the California Department of Public Health.

Existing law:

- 1) Provides for the licensure of health facilities, including general acute care hospitals, special hospitals, skilled nursing facilities (SNFs), intermediate care facilities (ICFs), and congregate living health facilities, by the California Department of Public Health (CDPH). Health facilities are defined, in part, as facilities for the treatment of human illness to which persons are admitted for a 24-hour stay or longer. [HSC §1250, et seq.]
- 2) Defines a “SNF” as a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. [HSC §1250(c)]
- 3) Requires an applicant for a health facility license, or for approval to manage an already-licensed health facility, to file with CDPH an application containing specified information, including the following:
 - a) Name of the applicant, type of facility, the location of the facility, and the name of the person in charge of the facility;
 - b) Evidence satisfactory to CDPH that the applicant is of reputable and responsible character. If the applicant is a firm, organization, partnership, company or the like, the evidence shall be submitted as to the members or shareholders thereof and of the person in charge of the health facility;
 - c) Evidence satisfactory to CDPH of the applicant’s ability to comply with the rules and regulations promulgated by CDPH; and,
 - d) Disclosure of evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of a lease agreement or deed of trust, and the names and addresses of any persons or organizations listed as owner of record in the real estate. [HSC §1265]
- 4) Defines “manage,” for purposes of 3) above, with respect to facilities licensed as a general acute care hospital, acute psychiatric hospital, or special hospital, as assuming operational control of the facility. [HSC §1265(l)]

- 5) Requires each applicant for a license to operate a SNF or ICF to disclose to CDPH the name and business address of each general partner if the applicant is a partnership, or each director and officer if the applicant is a corporation, and each person having a beneficial ownership interest of 5% or more. Requires any of these persons who have ever been an administrator or corporate officer, or have ever held an ownership interest of 5% or more in any other SNF or ICF or any licensed community care facility, to disclose this information to CDPH. [HSC §1267.5(a)]
- 6) Requires the information required in 5) above to be provided to CDPH upon initial application for licensure, and any change in the information to be provided within 30 calendar days of that change. [HSC §1267.5(a)]
- 7) Prohibits any person from acquiring a beneficial interest of 5% or more in any corporation or partnership licensed to operate a SNF or ICF, or in any management company under contract with a licensee of a SNF or ICF, nor can any person become an officer or director of, or general partner in, a corporation, partnership, or management company of this type without the prior written approval of CDPH. [HSC §1267.5(b)]
- 8) Permits CDPH to deny approval of a license application, or of an application for approval of the acquisition of a beneficial interest of 5% or more, if a person named in the application was an officer, director, general partner, or owner of a 5% or more interest in a licensee of, or in a management company under contract with a licensee of, a SNF, ICF, community care facility, or residential care facility for the elderly at a time when one or more violations of law were committed that resulted in suspension or revocation of its license, or at a time when a court-ordered federal receiver was appointed, or at a time when a final Medi-Cal decertification action was taken. [HSC 1267.5(c)]

This bill:

- 1) Prohibits any person, including an applicant for licensure, change of ownership, or change of management, from acquiring, either directly or indirectly, an ownership interest in a SNF or from operating, establishing, managing, conducting, or maintaining a SNF, prior to review, approval, and issuance of a license by CDPH.
- 2) Defines various terms for purposes of this bill, including the following:
 - a) “Beneficial ownership interest” means any of the following:
 - i) The possession by a person of an ownership interest, including a combination of direct and indirect ownership interests, totaling 5% or more in any licensed health facility;
 - ii) An ownership interest of 5% or more in any mortgage, deed of trust, note, or other obligation secured by a licensee of, or applicant, for licensure of a health facility, if that interest equals at least 5% of the value of the property or assets of the applicant or licensed health facility;
 - iii) Is an officer or director of a licensed health facility or applicant for licensure of a health facility that is organized as a corporation;
 - iv) Is a partner in a licensed health facility or applicant for licensure of a health facility that is organized as a partnership; or,
 - v) Is a member of a licensed health facility or applicant for licensure of a health facility that is organized as a limited liability company;

- b) “Chain” means a group of two or more licenses that are owned directly or indirectly, as defined, by the same persons, companies, or entities;
- c) “Change of ownership” means any of the following:
 - i) For a partnership, the removal, addition, or substitution of a partner;
 - ii) For a corporation, the merger of the applicant’s or licensee’s corporation into another corporation, or the consolidation of two or more corporations of the licensee, resulting in the creation of a new corporation; however, the transfer of corporate stock, the merger of another corporation into the applicant’s or licensee’s corporation, or the approved lawful conversion of a corporation to a limited liability company does not constitute a change of ownership;
 - iii) For a limited liability company, the merger of the applicant’s or licensee’s limited liability company into another limited liability company, or the consolidation of two or more limited liability companies (LLCs), of the licensee, resulting in the creation of a new limited liability company; however, the transfer of limited liability company interest, the merger of another limited liability company into the applicant’s or licensee’s limited liability company, or the approved lawful conversion of a limited liability company to a corporation does not constitute a change of ownership;
 - iv) The sale, conveyance, transfer, or disposition of title and property of a licensed health facility or licensee of a licensed health facility to another person or entity who is not the licensee where, as a result of the sale, conveyance, transfer or disposition, the licensee has lost the right to possess and occupy the physical structures, buildings, or real property that comprise the operational location of the health facility approved by CDPH; or,
 - v) The lease of all or part of the health facility’s property and assets to a person or entity who is not the licensee, where the lease is either a new lease or a transfer, sublease, or assignment of the licensee’s right to possess or occupy the physical structures, buildings, or real property that comprise the operational location of the health facility approved by CDPH;
- d) “Manage” means to assume operational control over a facility, to make financial decisions for the facility, to direct or control aspects of patient care and quality within the facility, or to be involved in the hiring, firing, supervision, and direction of direct care staff when these actions are completed by a management company hired, retained, or authorized to act on behalf of a licensee. Excludes financing exchanged between multifacility organizations from the definition of manage;
- e) “Managing employee” means any general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operations of a licensed health facility;
- f) “Management company” means an entity that directly or indirectly conducts the day-to-day operations or exercises managerial control of a health facility licensed by CDPH but is not the licensee;
- g) “Ownership interest” means the possession of equity in the capital, the stock, the principal property and assets, or the profits of the licensed health facility. Permits an ownership interest to be either direct or indirect. Defines “direct ownership interest” as interest in the licensed health facility or applicant for licensure of a health facility, and defines “indirect ownership interest” as an ownership interest in an entity that itself has an ownership interest in a licensed health facility or of an applicant for licensure of a health facility;
- h) “Operate” means to own, lease, sublease, establish, maintain, conduct the affairs of, or manage a SNF; and,

- i) “Parent corporation” or “parent company” means an organization that is the legal entity owning a controlling interest in an organization licensed by CDPH. Specifies the parent organization is the “ultimate” parent, or the top entity in a hierarchy (which may include other parent organizations) of subsidiary organizations that is not itself a subsidiary of any corporation. Specifies a legal entity may be its own parent organization if it is not a subsidiary of any other organization.
- 3) Requires an applicant for a license as a SNF to submit an application to CDPH at least 120 calendar days prior to acquiring, operating, establishing, managing, conducting, or maintaining a SNF.
 - 4) Requires a licensee or party that plans to relinquish ownership, operations, or management of a SNF to report the change to CDPH on a CDPH-provided form 120 calendar days prior to the anticipated change of ownership. Prohibits a licensee from relinquishing ownership, operations, or management of a SNF until CDPH completes its review and approval of the application of the prospective licensee or management company.
 - 5) Permits a SNF to request an expedited application review, notwithstanding the requirements of this bill, if the facility is subject to receivership or temporary management, as specified, at immediate risk of decertification, license revocation or suspension, closure, or other exigent circumstances exist that CDPH concludes would be best served by bringing in an interim manager. Requires the applicant to submit a complete application to CDPH, and requires CDPH to expedite the determination that the applicant is responsible and reputable to assume the facility’s license.
 - 6) Permits an applicant for an expedited review pursuant to 5) above to operate the facility once the responsible and reputable assessment has been conducted while the remainder of the application review occurs. Permits the interim manager to only operate the facility until CDPH completes the application review and approval of the application of the prospective licensee.
 - 7) Requires the provisions of this bill to apply to any form of change of ownership, operations, or management involving a SNF, including, but not limited to, the following transactions:
 - a) Establishment of interim or longer-term management agreements wherein operational control or management responsibilities are transferred from the owner or licensee to a new entity;
 - b) Establishment of any type of agreement with an entity or person to make financial decisions for the facility, to direct or control aspects of patient care and quality within the facility, or to be involved in the hiring, firing, supervision, and direction of direct care staff when these actions are completed by a management company hired, retained, or authorized to act on behalf of a licensee;
 - c) The transfer, purchase, or sale of ownership interest in the facility or licensee of 5% or more;
 - d) Transactions related to the acquisition of 5% or more in any corporation or partnership licensed to operate a SNF, or in any management company under contract with a licensee of a SNF, as specified; and,
 - e) The lease of all or part of a facility.

- 8) Requires an application for a license under this bill to be filed on forms established and furnished by CDPH, which are required to include all of the following information:
- a) Information required under specified provisions of existing law such as evidence satisfactory to CDPH that the applicant is of reputable and responsible character, evidence of sufficient financial resources to operate the facility for a period of 90 days (increased from 45 days under existing law), and information about any partner, director, officer, or person having an ownership interest of 5% or more in the facility or in a management company of the facility;
 - b) Whether the applicant is a for-profit, not-for-profit, or government entity;
 - c) Names of all prospective owners and their ownership percentages, and names of all prospective directors, board members, and managers, including of any parent organizations;
 - d) Evidence satisfactory to CDPH that the applicant is reputable and responsible to assume the facility's license or management of its operations and meets the requirements of this bill and other applicable laws;
 - e) If applicable, information about any other health, residential, or community care facilities owned, managed, or operated by the same applicant or any parent organization, and if part of a chain, a diagram indicating the relationship between the applicant and the persons or entities that are part of the chain; the name of any persons that own the real property on which the facility seeking licensure and any other facility owned or operated by the same applicant is located, along with copies of property or lease agreements; and the name and address of any management company that would manage the facility and the same information required of applicants for the management company and copies of any management agreements;
 - f) The name of the chief executive officer, general partner, owner, and that person's prior or present service as an administrator, chief executive, general partner, director, or as a person who has held or holds an ownership interest of 5% or more in any SNF, ICF, residential care facility for the elderly, community care facility, health facility, or a similarly licensed facility in California or any other state within the past three years;
 - g) Within the past three years, any revocation, suspension, probation, exclusion order, termination of certification by the Centers for Medicare and Medicaid Services (CMS), receivership, appointment of a temporary manager, designation as a special focus facility candidate by CMS, or other similar administrative enforcement or disciplinary action that was initiated in any state or by the federal government, or is in the process of being adjudicated against a facility associated with the applicant or any person identified in f) above, by any authority responsible for the licensing of health, residential, or community care facilities, along with any copies of findings, orders, or both, issued by any health, residential, or community care licensing agency, certification agency, or any court relevant to these actions;
 - h) Within the past three years, any injunctions, corporate integrity agreements, judgments, or settlements resulting from actions filed by the Attorney General, the Department of Justice, a district attorney's office, or other federal, state, or local law enforcement agency against the applicant, or any facilities that they have owned, operated or managed;
 - i) Within the past three years, any petition for bankruptcy relief involving the applicant's operation or closure of a health, residential, or community care facility licensed in any state, the court, date, and case number of the filing, and whether a discharge was granted, and if discharge was not granted, copies of any court findings supporting denial of discharge;

- j) Within the past three years, the identity of any SNF operated or owned by the applicant that has been subject to foreclosures, judgment liens, utility cutoffs, or disruptions in staffing, services, or supplies due to failures to meet payroll or pay bills; and,
 - k) Any other information as may be required by CDPH for the proper administration and enforcement of this bill and the laws regulating SNFs.
- 9) Requires the information required by this bill to be provided to CDPH upon initial application for licensure, and requires any change in the information to be provided to CDPH with 10 calendar days of that change unless a shorter timeframe is required by CDPH. Permits a licensee of multiple facilities to provide a single notice of changes to CDPH on behalf of all licensed facilities within the chain, and requires this single notice to clearly identify which changes apply to which facilities within the chain.
- 10) Permits CDPH to deny an application for licensure or subsequently revoke a license if the applicant withheld information, made a false statement of material fact, or did not disclose administrative disciplinary or enforcement actions on the application.
- 11) Requires CDPH to consider the criminal history of the prospective licensee, or prospective management company, including all officers, directors, or shareholders having an ownership interest of 5% or more.
- 12) Requires CDPH to cross-check all information and evidence submitted by the applicant concerning its suitability, including, but not limited to, by verifying ownership and compliance histories through its own records, and by cross-checking with other licensing agencies in this state, and other states and territories.
- 13) Requires CDPH to contact the appropriate licensing agencies if the applicant holds a health care professional's license issued by California to obtain information about disciplinary actions taken against the licensees and to confirm that their licenses are in good standing.
- 14) Requires CDPH, in making a determination on whether an applicant is responsible and reputable, to thoroughly examine the compliance histories of facilities that are or have been owned, operated, or managed by the applicant and of any SNF chain that is associated with the applicant during the three-year period before the date of application.
- 15) Permits CDPH to review and consider information and evidence concerning the applicant's suitability, including, but not limited to, CDPH's inspection findings during the three years prior to the application, including federal and state findings resulting in regulatory violations, citations, other enforcement penalties, temporary manager appointments, findings of violations of required staffing levels, financial instability related to the operation of the health facility, and any other information CDPH considers necessary for its determination.
- 16) Requires any of the following within the prior three years or during the application review period to automatically disqualify an applicant:
- a) The applicant or anyone with an ownership interest of 5% or more in the applicant entity has owned, operated, or managed a SNF, ICF, assisted living facility, community care facility, or other type of long-term care facility in any state that was terminated by CMS, had its license suspended or revoked, or was subjected to receivership or temporary management;

- b) The applicant is on the List of Excluded Individuals/Entities of the United States Department of Health and Human Services Office of the Inspector General.
 - c) The applicant has owned, operated, or managed a long-term health facility that has been issued two or more of any combination of “AA” citations or “A” citations involving the death of a resident at the facility within the prior 24 month period; or,
 - d) The applicant owns, operates, or manages 10% or more of the SNFs in the state upon the date of submission of the application, unless CDPH in its discretion concludes that the interests of resident health and safety requires that an exception is warranted.
- 17) Requires an applicant to automatically be disqualified if he or she has had a felony conviction related to the services or care provided in a health or community care facility, regardless of the length of time between the date of the application and the felony conviction.
- 18) Requires CDPH to review and make a determination within 120 calendar days of an applicant’s submission of a complete application. Permits CDPH to extend the 120-day time period by up to an additional 60 calendar days if it cannot complete its determination due to extenuating circumstances.
- 19) Requires CDPH, if it determines that the application is incomplete, to provide written notice of missing information to the applicant, and if the applicant does not submit a completed application with 45 days of notification of missing information, requires the application to be denied.
- 20) Prohibits an applicant from acquiring, operating, establishing, managing, conducting, or maintaining a SNF prior to obtaining a favorable determination from CDPH on a licensure application. Prohibits a transfer of ownership, operations, or management of the facility from taking place prior to CDPH’s approval, whether interim, long term, or permanent.
- 21) Requires CDPH to notify the applicant in writing if it determines that the applicant is responsible and reputable and has complied with all the requirements of this bill and other applicable requirements for licensure, and requires the applicant and licensee to notify CDPH within 10 days of the final transactions effecting the orderly transfer of the health facility operations from the licensee to the applicant. Requires the final orderly transfer of the health facility operations to occur no later than 120 days after CDPH’s notice of approval, with the ability for the applicant to apply for one 60-day extension.
- 22) Requires CDPH, if it denies the application, to notify the applicant in writing of the basis for the determination, and permits the applicant, within 20 days of the service of the denial, to appeal and request an administrative hearing in accordance with specified provisions of existing law. Prohibits an applicant from acquiring, operating, establishing, managing, conducting, or maintaining the facility during the pendency of the appeal, and requires management and operational control of the facility to remain with the current licensee.
- 23) Permits the following actions to be immediately taken if an applicant acquires, operates, establishes, manages, conducts, or maintains a SNF before CDPH acts on its application, following CDPH’s denial of its application, or in any instance when a person or entity acquires, operates, establishes, manages, conducts, or maintains a SNF without first applying to and obtaining a license for that purpose:

- a) Permits CDPH to issue a class “B” citation and civil penalty, in an amount between \$500 and \$2,000 for each citation, if an applicant assumes management or operational control of a facility on behalf of a licensee prior to receiving approval, or if a licensee fails to report changes to CDPH. Requires CDPH to assess an additional \$500 penalty for each day that the deficiency continues beyond the date specified for correction. Requires any penalty assessed to be paid prior to the issuance of a permanent license, or to be collected by Medi-Cal offset if there is a balance due at the time the permanent license is issued;
 - b) Permits CDPH, subsequent to licensure, to assess a civil penalty of \$10,000 for a material violation of this bill;
 - c) Requires CDPH, if an applicant acquires, operates, establishes, or manages a facility following a denial, to ensure that the facility’s operation is transitioned to a qualified operator in a manner that will protect the health and safety of the residents; and,
 - d) Requires the facility administrator to advise all residents, their representatives, and the state and local long-term care ombudsperson offices of the circumstances, and inform them of the sanctions that are being imposed and of the residents’ right to remain at the facility while corrective actions are taken.
- 24) Requires a licensee to notify CDPH, if any proposed sale, transfer of operations, or change in management of a facility does not occur after the submission of an application to CDPH, within 10 days of the event terminating the sale, transfer, or change, including the end of contract negotiations or a transaction not closing escrow.
- 25) Requires all applications under this bill to be considered public records, except to the extent the information in the application is confidential or privileged under applicable state or federal privacy laws, or is otherwise exempt under the California Public Records Act.
- 26) Exempts from the provisions of this bill SNFs operated as a distinct part of an acute care hospital, or receivers or temporary managers appointed in accordance with state or federal laws. However, requires this bill to apply to changes of ownership of a distinct part SNF that will be separated from the hospital’s license.
- 27) Specifies that this bill applies only to license applications or reports of changes submitted after July 1, 2023.
- 28) Requires CDPH, on or before April 1, 2023, to convene a stakeholder group to discuss, review, and determine the feasibility of establishing a new methodology to calculate application fees for SNFs that reflect departmental costs to process required applications.
- 29) Makes a number of Legislative findings and declarations, and states the intent of the Legislature to establish suitability standards for persons seeking to acquire, operate, establish, or manage SNFs, and to prohibit the use of interim or longer-term management agreements unless an application has been approved by CDPH, among other things.

FISCAL EFFECT: According to the Assembly Appropriations Committee analysis of the prior version of this bill, CDPH estimated implementation costs, including additional personnel, consulting, technology, enforcement, and development of an annual report for the Legislature (which has since been removed from the bill), of \$540,699 for the first budget year, and \$924,877 per budget year ongoing (Licensing and Certification Fund or GF).

Because CDPH is already developing a regulation package related to change of ownership applications, additional costs for developing regulations are not included in the estimates.

PRIOR VOTES:

Assembly Floor:	55 - 15
Assembly Appropriations Committee:	12 - 3
Assembly Health Committee:	12 - 2

COMMENTS:

- 1) *Author's statement.* According to the author, we need to do more to protect seniors living in nursing homes and other residential care facilities. Unfortunately, some California nursing home operators are operating and owning nursing homes without a fully completed license approved from CDPH. People die when unscrupulous or unqualified nursing home owners and operators put profits above people, especially during the pandemic. California's largest nursing home chain is operating at least two dozen nursing homes they have acquired in 2014 without obtaining appropriate licensing from CDPH. Six of the chain's licensure applications were denied years ago due to horrific conditions in its facilities. Yet, CDPH is still allowing these operators to run the facilities while purchasing more nursing homes during the COVID-19 pandemic. Another chain with a long history of licensure denials due to unfitness by CDPH – dating back to 2004 – continues to operate SNFs, including one that is under criminal investigation for a COVID-19 outbreak and the COVID-related deaths of residents during the pandemic. CDPH has claimed it has no authority to evict unlicensed nursing home operators. The pandemic has magnified the dangers of living in nursing homes when operated by unfit owners. We have placed thousands of resident's lives in the trust of operators who have demonstrated they do not deserve that trust. This bill will give CDPH stronger authority, during the licensing process, to disqualify unfit owners and operators before they are able to acquire skilled nursing facilities.
- 2) *Background on the change of ownership process and the underlying problem targeted by this bill.* There are 1,215 SNFs licensed in California that provide care to 96,296 residents and patients. Under existing law governing change of ownerships (CHOWs), applicants to own or operate a SNF are required to apply and be approved for a license by CDPH. However, nothing in current law prevents a current licensee from selling the underlying nursing home to someone who then applies for a license. A prospective operator can purchase the SNF, but cannot purchase the license. Therefore, a facility can currently be sold to just about anybody, but in doing so, the new owner must enter into a management agreement with the current license holder to operate the facility while waiting for their own license application to be approved. According to CDPH, during this time, the current licensee is still responsible for the care of the residents despite the sale of the business. If the prospective licensee's application is denied, the prospective licensee can no longer run the facility, and management responsibilities would revert back to the current licensee, who may no longer be involved in the operation of the home in any respect. The denied prospective licensee may appeal, and can continue to operate the facility until the appeal is resolved.

Additionally, while current law requires CDPH approval when someone acquires an ownership interest of 5% or more in any corporation or partnership licensed to operate a SNF, or in any management company under contract with a SNF, often times there is a parent company involved that allows corporations operating nursing homes to change hands without triggering this approval. For example, if ABC corporation is licensed to operate a

SNF, but ABC corporation is actually part of a large holding company XYZ that operates a chain of SNFs, then XYZ can be purchased by another company without triggering any change in the ownership of ABC corporation. This is the “nursing home chain” loophole that supporters of licensing reform argue would still be allowed under June 15 amendments to this bill, and one of several reasons California Advocates for Nursing Home Reform (CANHR) has switched from supporting the bill to opposing it. CDPH counters that by defining ownership interest to include “indirect ownership,” which is ownership in an entity which itself has ownership in the facility, the nursing home chain loophole is still being addressed in this bill as amended.

- 3) *Los Angeles County Office of Inspector General (LAC OIG) report highlights complex ownership structures.* In February 2021, LAC OIG published “Improving Oversight and Accountability Within Skilled Nursing Facilities: Second Interim Report,” which followed publication of the first interim report in October of 2020. These reports were directed by the Los Angeles County Board of Supervisors in response to the devastating impact of the COVID-19 pandemic on SNF residents and staff. While the two reports focus primarily on COVID-19 mitigation efforts and the capacity of the County’s Health Facilities Inspection Division’s to accomplish its oversight role, this second interim report also looked at the corporate ownership structures of large SNF chains in California. According to LAC OIG, large SNF chains have developed specific strategies to increase their profitability, including creating complex ownership structures to reduce liability by establishing multiple layers of related companies which separately own, manage, and operate their component facilities. Some SNF chains implement complicated ownership structures which utilize separate management companies and service providers owned by the same ownership group via a series of LLCs. This can result in a complex and interlocking structure of related individual and corporate owners, management companies and service providers that obscures the ownership and the financial relationships between the various LLCs and lead to higher administrative costs. A study of one of California’s largest SNF chains found that corporate profits were hidden in management fees, lease agreements, and various payments for ancillary support services that were made to companies related to the chain. The LAC OIG cited a 2014 article in the Sacramento Bee which found that a SNF owner had created a network of nearly 80 separate business entities which managed or provided services to 54 SNFs throughout California. The LAC OIG stated that large ownership groups may use complex and overlapping systems of dissimilarly named companies to create confusing corporate structures that complicate accountability efforts. According to LAC OIG, inadequate oversight and accountability mechanisms may also inadvertently aid those who are inclined to engage in corporate conflicts of interest, self-dealing, or other financial crimes or abuses. The LAC OIG stated that it will further analyze the complex issues involving ownership structures, and make corresponding recommendations, in its final report.
- 4) *Media articles on the problem focused on Brius Healthcare.* On December 31, 2020, the Washington Post published a lengthy investigative article focused on the largest nursing home operator in California, known as Brius Healthcare (Brius) and owned by Shlomo Rehnitz. According to this article, Brius operates about 80 nursing homes, and like the majority of the industry nationwide, utilizes a business practice of paying related companies for goods, services, and rent. According to the article, in 2018 alone, Brius nursing homes paid related parties \$13 million for supplies, \$10 million for administrative services and financial consulting, and \$16 million for workers’ compensation insurance. The homes also sent a total of \$64 million in rent to dozens of related land companies. The article notes that the practice is legal and widely support by the industry as a way to help control costs and

limit financial liability. Watchdog groups argue that nursing home owners can reap excessive profits from public funds by overpaying their own companies, and that related parties generally do not have to disclose profits, leaving regulators with little way to assess the financial gains of owners. The Washington Post obtained tax returns from 2013 for five companies connected to Brius, four of which were holding companies that draw income from companies in which they invest or own. The tax returns showed that the four holding companies took in a total of \$38 million from Brius nursing homes in 2013, and of that, nearly \$28 million was paid in distributions to Rechnitz and his wife. All but 18 Brius homes pay rent to related companies, which either own the properties outright or lease the buildings from unrelated owners and then sublease them to the nursing homes. According to the article, in the Eureka area, a company managed by Rechnitz in 2011 leased five nursing homes, agreeing to pay the property owner a total of \$3 million in rent per year. Rechnitz's company then subleased the buildings to the nursing homes for \$3.5 million. Overall, Brius' rent payments for buildings and equipment were 20% higher per bed than comparable for-profit nursing homes in California.

The article also examined poor quality of care issues at Brius facilities, citing several examples of incidences where state or federal regulators took action against Brius facilities for violations of health and safety standards. According to this article, in 2014 the California Attorney General filed an emergency motion to block Rechnitz from purchasing 19 homes in bankruptcy court, calling Rechnitz a "serial violator of rules within the skilled nursing industry." However, a judge dismissed the state's motion, and Brius was able to purchase the homes. In 2016, CDPH denied change of ownership license applications for five facilities the Brius network had acquired, citing 370 state and federal health and safety violations from 2013 to 2016. However, Brius is still operating the homes through an interim management agreement with the former operator, who is still licensed.

CalMatters published results of its investigation on the nursing home licensing process on April 6, 2021, and also focused on Brius, CalMatters looked at the group of nursing homes that Rechnitz purchased under auction in 2014 over the objection of the Attorney General, as described above. This group of nursing homes, called Country Villas, had a devastating number of deaths due to COVID early in the pandemic. While this happened at nursing homes throughout the country, CalMatters states that what was different in this situation is that the owner of the County Villa chain isn't licensed to operate them, with his applications "pending" for years. CalMatters quoted an attorney for Brius who stated that "all Country Villa facilities have licenses in good standing and are being operated under an "interim management agreement." This is the type of situation that this bill is seeking to address: preventing the purchase of nursing homes prior to the new owner being licensed to operate them.

- 5) *State Auditor Report.* The State Auditor published a report in May 2018, "Absent Effective State Oversight, Substandard Quality of Care Has Continued". According to the audit, the state has not adequately addressed ongoing deficiencies related to the quality of care that nursing facilities provide. One of the recommendations of the audit is for CDPH to amend its application licensing reviews by developing a defined process that specifies how an analyst will determine whether an applicant has demonstrated its ability to comply with state and federal requirements. The audit notes that the process should ensure that analysts conduct complete and standardized reviews of each nursing facility application, and should clearly outline what factors analysts will consider when determining whether an applicant is in compliance. The audit also recommends that CDPH should document the additional factors

higher-level management will consider if applications are elevated for their review, and to ensure that CDPH documents its decisions adequately.

- 6) *Pending regulations at CDPH.* CDPH issued an All Facilities Letter (AFL) in October of 2018, notifying stakeholders that it was developing regulations governing the CHOW process. The AFL asked for input on the following questions:
- a) What types of health facilities should be included in the CHOW regulations?;
 - b) What type of transactions constitute a CHOW? What percentage of ownership change should be considered a CHOW?;
 - c) What background information should CDPH review to establish a “reputable and responsible character”? What person(s) should CDPH examine, that are associated with an applicant that is a firm, association, organization, partnership, business trust, corporation, or company?;
 - d) Should CDPH examine an applicant’s compliance practicing under a professional license, if applicable, during the health facility application review? If so, what compliance factors are most relevant to owning a health facility?;
 - e) In evaluating an applicant’s compliance, what period of time should CDPH review and consider?;
 - f) What factors in an applicant’s compliance history establish the ability or inability to follow the rules and regulations applicable to operating a health facility?;
 - g) What criteria should CDPH apply to a compliance history to determine approval/denial of a CHOW?;
 - h) How can an applicant best demonstrate the financial ability to operate a health facility?
 - i) In the event of a CHOW denial, what would be the responsibility of the original licensee to take back operations of the facility?; and,
 - j) Should a CHOW application be reviewed and approved by CDPH before a purchase of the assets takes effect?

In 2019, CDPH stated that these proposed regulations were in final development and on schedule for completion by 2022. However, in an update provided in August 2021, CDPH noted that amended regulations, affecting not only SNF CHOWs but also those for general acute care hospitals, acute psychiatric hospitals, special hospitals, and ICFs, are still in process. CDPH states that the proposed regulations incorporate comments received in two stakeholder engagement meetings. The regulatory package addresses what transactions constitute a CHOW, reporting CHOWs to CDPH, and the process for approving CHOWs. CDPH notes that, barring unforeseen adverse circumstances, these regulations may be promulgated in fiscal year 2022-23 or 2023-24.

- 7) *Double referral.* This bill is double referred. Should it pass out of this committee, it will be referred to the Senate Judiciary Committee.
- 8) *Prior legislation.* AB 1042 (Jones-Sawyer, Chapter 475, Statutes of 2021) authorizes CDPH to take legal action to recover unpaid civil penalty amounts assessed against long-term care facilities from related parties in which the licensee has an ownership or control interest of 5% or more. AB 1042 permits the California Department of Health Care Services to take legal action to recover unpaid quality assurance fees from a skilled nursing facility’s financial interest in a related party.

SB 650 (Stern, Chapter 493, Statutes of 2021) requires an organization that operates, conducts, owns, manages, or maintains a SNF to prepare and file with HCAI an annual consolidated financial report that includes data from all operating entities, license holders, and related parties in which the organization has an ownership or control interest of 5% or more and that provides any service, facility, or supply to the SNF. SB 650 requires HCAI to post those reports and related documents to its internet website.

AB 1695 (Carrillo, Chapter 832, Statutes of 2019) requires a freestanding SNF to give a written notice to all residents of the facility 90 days prior to a transfer of management or a CHOW, and requires all employees to be retained for a 60-day transition employment period.

AB 1953 (Wood, Chapter 383, Statutes of 2018) requires skilled SNFs to disclose to HCAI whether the SNF, or any partner, director or officer of the SNF, has an ownership or control interest of 5% or more in a related party that provides any service to the SNF.

AB 275 (Wood, Chapter 185, Statutes of 2017) revises the procedures for when a long-term health care facility plans to close or there is otherwise a change in the status of their license resulting in a need to transfer residents by, among other things, requiring written notice to residents to be made 60 days in advance, rather than 30; requiring the facility to hold a community meeting for residents; and adding requirements to the proposed relocation plans that facilities are required to have approved by CDPH, including identifying the number of affected residents and identifying the availability of alternative beds within the community as part of the proposed relocation plan.

- 9) *Recent amendments requested by CDPH, support now unclear.* Prior to the June 15 amendments, this bill was sponsored by CANHR and was supported by a long list of organizations, including AARP, the California Long-Term Care Ombudsman Association, the California Senior Legislature, Consumer Attorneys of California, Disability Rights California and more. However, with the June 15 amendments, CANHR is now opposed to the bill. It is unclear at this time whether the other supporters of this bill will remain in support, or change their position.

The amendments adopted on June 15, as requested by CDPH, were substantial. Among the major changes was reducing the 10-year look back on compliance history to a 3-year look back, narrowing the types of information and evidence that CDPH is required to review prior to approval, deleting language prohibiting all admissions to a facility operated by someone that has not been approved by CDPH, deleting misdemeanor penalties for operating a nursing without approval, eliminating an annual report on SNF ownership and management applications, deleting language that provided the public with the opportunity to comment on pending applications, and more.

- 10) *Support.* The California Association of Long Term Care Medicine (CALTCM) states that they have thoroughly reviewed the recent amendments, and continue to believe this bill brings critical accountability to the nursing home industry in California. CALTCM states that the nursing home licensing process in California is fraught with problems, and lack of licensing accountability combined with a lack of ownership transparency has led to an untenable situation as the state attempts to hold nursing home owners accountable. CALTCM states that they appreciate the input from CDPH to add language that will more effectively allow it to perform its important duties in overseeing the licensing of SNFs.

11) *Opposition.* CANHR states that until the June 15 amendments, it was the sponsor of this bill and worked diligently to secure its passage for the past 18 months. According to CANHR, sadly, the amendments eviscerate the bill and will harm nursing home residents. CANHR states that this bill was a direct response to exceptional reporting by CalMatters, LAist, KPCC, and other nonprofit newsrooms in California on nursing home ownership scandals, and that their reporting painstakingly exposed longstanding failures by CDPH to prevent chain operators with terrible performance histories from expanding their operations in the state. CANHR states that almost unimaginably, CDPH officials allow nursing home chains to continue operating facilities even after denying them licenses due to abysmal track records. However, CANHR states that the most recent amendments as requested by CDPH gut this bill and transform it from a vital elder abuse prevention bill into a lifeline for California's most dangerous nursing home operators. Core suitability standards are eliminated, track records of nursing home owners are wiped clean every three years, and licensure loopholes are preserved. CANHR argues that under these amendments, entire nursing home chains can be bought and sold without state approval of their fitness. CANHR states that the amendments also wipe out the bill's critically important enforcement measures, replacing them with a Class B penalty of \$2,000, the lowest state penalty category. Instead of the major reform that the nursing home licensing system needs, this bill now codifies and endorses the current system that has nourished the worst operators in the state.

SUPPORT AND OPPOSITION:

Support: California Association of Long Term Care Medicine

Oppose: California Advocates for Nursing Home Reform

-- END --