

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 4477

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: NOVEMBER 2, 2020

SUMMARY

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

Office of Legislative Services Estimate

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

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

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

BILL DESCRIPTION

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

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

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

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

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

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

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

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

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

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

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

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

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

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

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

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

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

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

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